

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 1112 OF 2005

JUDGMENT:

Against the order dated 10.12.2002 passed by the Motor Accidents Claims Tribunal-cum-Additional District Judge, Ananthapur in OP No. 398 of 1997 fixing the liability for payment of compensation of Rs.60,000/- against the respondents 1 and 2 in the above mentioned O.,P. i.e., the owner and insurer of the offending lorry bearing N o. AP 02 V 0123 jointly and severally, the present appeal is filed by the 2nd respondent who is the insurer of the above mentioned lorry.

The 1st respondent herein (claimant in OP No. 398 of 1997) has laid a claim against the appellant herein i.e., insurance company and owner of the offending lorry ie., 2nd respondent herein, claiming compensation of Rs.80,000/- before the Tribunal regarding the injuries sustained by him in a road accident. It is averred by the claimant that he was the cleaner of lorry bearing No. AP 02 V 0123, owned by the 2nd respondent herein and insured with the appellant herein. His case was that on 13.3.1997 while he was travelling in the above mentioned lorry as a cleaner, at about 12.30 P.M. when the lorry reached near 'Batlo Sunkulamma' temple on Gooty-Kurnool road, the driver drove the lorry in a rash and negligent manner with high speed, as a result of which he lost control over the lorry and it turned turtle. In the above mentioned accident he sustained fractures to his right upper hand and thigh and injuries on other parts of his body.

The Tribunal has partly allowed the claim petition awarding compensation of Rs.60,000/- and made the appellant herein liable to such amount along with the owner of the offending vehicle.

The principal contention of the appellant is that the Tribunal without taking into consideration of the fact that the policy conditions were violated by the owner of the offending lorry by allowing the claimant to travel in his vehicle as an 'unauthorized passenger', had held it liable to pay compensation instead of exonerating it from the liability to pay the amount of compensation. It is the settled law that a person who travels in a goods vehicle as an unauthorized passenger is not entitled to get compensation from the insurer of the goods carrying vehicle and whatever amount awarded towards compensation is payable by the insured alone. The insurance policy taken by the owner of the offending vehicle does not cover the risk of a passenger. The Tribunal passed the impugned award in deviation of the legal proposition laid down by the Apex Court in *National Insurance Company Ltd Vs. Jethu Ram and others*¹ wherein it is clearly laid down that an injured who travels in a goods vehicle is not entitled to get compensation even under no fault liability, if the policy conditions are violated. Neither X-Ray films nor the disability certificate is produced by the claimant in proof of the nature of the injuries sustained by him. Though no evidence is there in record establishing the nature of injuries sustained by the claimant, the Tribunal awarded compensation of Rs.60,000/- and the same is highly excessive and there is no rationale or justification in granting compensation of

¹ 1998 ACJ 921

Rs.60,000/-. Therefore, on the above mentioned grounds, the appellant seeks to set aside the order passed by the Tribunal.

I have perused the order passed by the Tribunal, dated 10.12.2002. The Tribunal in para-8 of its order has answered negatively the contention raised by the appellant-insurance company claiming exoneration of its liability due to non-production of evidence of any nature to establish that the claimant travelled as a passenger in a goods carrying vehicle. Even the Tribunal held that the insurance company is liable to pay the compensation as the violation of the policy conditions pleaded by the insurance company is not substantially proved. No substantial material is found to dissent from the views expressed by the Tribunal while making the insurance company liable to pay the compensation amount along with owner of the offending lorry. Since no substantial material is produced by the insurance company establishing its contention that the claimant traveled as a gratuitous passenger, but not in the capacity of cleaner of lorry, the Tribunal has rightly fastened the liability as against the insurance company.

The order of the Tribunal shows that two X-ray films are produced by the claimant to prove the nature of the injuries received by him. The claimant has examined Dr. A. Jagannath, Civil Assistant Surgeon working in Government Hospital, Ananthapur as P.W.2 and he was the doctor who examined him on the date of accident and found fracture of left upper arm, fracture of left upper femur and head injury. The evidence available in the case record clinchingly establishes the fact that the claimant sustained fracture of left upper arm, fracture of left upper femur

and other injuries. Evidence is also there in the case record establishing that the claimant was in the hospital for a period of 40 days i.e., from 13.3.1997 to 23.4.1997. The Tribunal, upon after taking into consideration of the nature of the injuries received by the Tribunal and the treatment taken by him in the Government Hospital for a period of 40 days, had awarded compensation of Rs.60,000/- which is just and reasonable. This Court has not noticed any substantial material to differ from the award passed by the Tribunal fixing the liability of the insurance company to pay compensation amount of Rs.60,000/- to the claimant along long with the owner of the offending lorry.

In the result, the appeal is dismissed confirming the award passed by the Tribunal. The miscellaneous applications, if any pending, in this case are ordered to be closed. There shall be no order as to costs.

Dt. 22.3.2017
KR

JUSTICE J. UMA DEVI