

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

MACMA No. 1982 OF 2012

Judgment:

Being aggrieved by the order and decree dated 15.03.2011 passed in MATOP No.1327 of 2009 by the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (FTC), Khammam, granting compensation of Rs.1,35,440/- with interest at 7.5% p.a., from the date of petition till realization, the appellant – Insurance Company preferred the present appeal.

2. The appellant herein is the second respondent, the first respondent herein is the petitioner – claimant and the second respondent herein is the first respondent – owner of the Trolley Auto. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts of the case, in brief, are that on 28.06.2009 the petitioner and his family went to Kota Maisamma Temple, at Karepally and in order to get the meals plates the petitioner along with Gullapalli Tirupathi and Anjaneyulu were proceeding on a Passion Plus Motor Cycle and the petitioner was a pillion rider of the said vehicle; when they crossed Aliya Thanda on the R & B road, one Auto Trolley bearing registration No.AP 20W 4372, which was driven by the first respondent in a rash and negligent manner dashed the motor cycle, due to which the petitioner sustained fracture of both bones of right leg, injury on right leg and simple injuries all over the body. A case in Crime No.99 of 2009 of Karepally Police Station was registered against the first respondent. The petitioner was shifted to Sri Sabasu Orthopaedic Hospital, Khammam, where operation was conducted by inserting steel plates and he was bed

ridden for about 12 days. He spent Rs.1,00,000/- towards medical expenses. The petitioner was aged about 20 years and he was doing Sugarcane Juice business and getting Rs.300/- per day. Due to accident, he lost his earning power. Hence, he claimed an amount of Rs.3,00,000/- towards compensation against the respondents 1 and 2.

4. The first respondent – owner of the Auto Trolley remained *ex parte*. The second respondent – Insurance Company filed counter denying the averments of the petitioner and stating that the first respondent is not having valid transport driving licence and the vehicle is not insured with them and the amount claimed is excessive.

5. Based on the above pleadings, the Tribunal framed three issues. On behalf of the petitioner, besides examining him as PW.1 he also examined Dr. S. Satyanarayana as PW.2 and got marked Exs.A1 to A7. On behalf of the second respondent – Insurance Company, RWs.1 and 2 were examined and Exs.B1 and B2 and Exs.X1 and X2 were marked.

6. The Tribunal, on appraisal of entire oral and documentary evidence on record, held on issue No.1 that the accident occurred due to rash and negligent driving of the driver of Auto Trolley. The Tribunal, on issue No.2, awarded an amount of Rs.30,000/- towards pain and suffering, Rs.93,440/- towards medical expenses, Rs.3,000/- towards attendant, transportation, extra nourishment and other miscellaneous expenses and Rs.9,000/- towards loss of income during the period of treatment. Thus, in all, the Tribunal awarded compensation of Rs.1,35,440/- with interest at 7.5% p.a.

7. Heard learned counsel for the appellant – Insurance Company and learned counsel for the first respondent – claimant.

8. The appellant – Insurance Company has not seriously disputed the compensation amount awarded by the Tribunal. The main contention of the learned counsel for the appellant in the present appeal is that since the Auto Trolley is goods carrying vehicle, the driver of the said Auto Trolley has to possess the LMV Transport endorsement on his driving licence, but at the time of accident the driver of the Auto Trolley was having LMV Non-Transport endorsement on his driving licence, hence the appellant – Insurance Company is not liable to pay the compensation.

9. In *Mukund Dewangan v. Oriental Insurance Company Limited*¹, the Hon'ble Supreme Court has held as follows.

“46 (iv) The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of “light motor vehicle” continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.”

10. From the above, it is clear that the driver holding LMV licence can drive all vehicles of class including transport vehicles and no separate endorsement is required to drive such transport vehicles. In the instant case, the evidence of RW.2, coupled with Exs.B2 and X2 - extracts of driving licences, shows that the driver was having LMV Non-Transport driving licence. As per the above decision of the Hon'ble Supreme Court, if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.

¹ AIR 2017 SC 3668

Hence, the contention of the learned counsel for the appellant – Insurance Company cannot be countenanced and it can be held that the Insurance Company is liable to pay compensation.

11. Accordingly, the MACMA is dismissed. There shall be no order as to costs.

12. As a sequel thereto, the miscellaneous petitions, if any, pending in this appeal shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 29th November 2018
Nsr

