THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.409 OF 2011

JUDGMENT:

Appellant-Insurance Company filed this appeal against the award and decree dated 20.08.2004 passed in M.V.O.P.No.243 of 1999 by the Motor Accidents Claims Tribunal-cum-II Additional District Judge (FTC), Khammam, granting compensation of Rs.39,000/- as against the claim of Rs.70,000/- for the injuries sustained by the first respondent in the motor accident occurred on 17.09.1998.

The first respondent-claimant filed a claim petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.70,000/- along with interest @ 24% per annum for the injuries sustained by him in the accident alleging that he boarded DCM Van bearing No.AP20-T-8991 at Kodada to proceed to Mudigonda and when the van reached the outskirts of Venkatapuram village, the driver of the vehicle drove the vehicle in a rash and negligent manner due to which the vehicle turned turtle, resulting the first respondent sustained grievous and simple injuries on his body, for which, a case in crime No.63/1998 was registered by Mudigonda Police. The injured was shifted to Government Hospital, Khammam, where he was treated initially. Later, he was referred to M.G.M.Hospital, Warangal. It was further stated that he used to earn Rs.200/- per day by running a hotel at Mudigonda. He was hospitalized for 20 days, took treatment in a private hospital by spending Rs.20,000/- and he could not able to move from his house for four months and suffered pain. Hence, he claimed compensation from the appellant, respondents 2 and 3.

The appellant-Insurance company filed a counter denying the averments of the claim petition and specifically pleading that the first respondent was a gratuitous passenger being carried in the vehicle in violation of the permit and hence the appellant is not liable to pay any compensation.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

1) Whether the accident took place due to rash and negligent driving of the driver of the vehicle?
2) Whether the petitioner is entitled to any compensation, and if so, to what amount and from which of the respondents?
3) To what relief?

On behalf of the first respondent, PWs 1 and 2 were examined and Exs.A.1 to A.7 were got marked. On behalf of the appellant, though no oral evidence was adduced, Ex.B.1 copy of Insurance Policy was got marked.

The Tribunal based on the evidence of PW.1-injured and Exs.A.1 to A.3, certified copies of FIR, charge sheet and wound certificate, came to the conclusion that the accident was occurred due to rash and negligent driving of the driver of the offending vehicle i.e. DCM Van.

As regards quantum of compensation, the Tribunal based on the evidence of P.W.2-Doctor who deposed that the disability suffered by the injured can be reduced by giving physio therapy and other connected treatment, the Tribunal held that there was no permanent disability suffered by the injured and thereby granted Rs.5,000/- towards shock, pain and loss of amenities of life, Rs.3,000/- each for two simple injuries each, Rs.20,000/- for grievous injury, Rs.5,000/- towards medical and incidental expenses and Rs.3,000/- towards loss of income, in all, Rs.39,000/- towards compensation along with costs and interest @ 9% per annum.

Sri Kota Subba Rao, learned counsel appearing for the appellant, while admitting that the vehicle is insured with the third respondent and insurance is in force, he denied negligence on the part of the driver of the vehicle. He would further contend that the first respondent was a gratuitous passenger being carried in the DCM van in violation of the permit. Hence, the appellant-Insurance Company is not liable to pay compensation and thus prayed to exonerate the appellant from paying the compensation.

Smt.Pingali Lakshmi, learned counsel for the 1st respondent, would contend that the Tribunal having held that respondents 1 and 2 in the O.P. were jointly and severally liable to pay the compensation to the 1st respondent herein, finally directed the appellant to pay the compensation to the 1st respondent. Hence, the appellant is liable to pay the compensation.

Having heard the learned counsel for the parties, this Court is of the view that the Tribunal has rightly held that the accident was occurred due to the rash and negligent driving of the driver of the offending vehicle. The appellant is the insurer of the offending vehicle i.e. DCM Van, which is being used to carry goods, etc. The appellant failed to prove that the 1st respondent was a gratuitous passenger and travelled in the DCM van in violation of the permit. As observed earlier, the Tribunal specifically held that R.2 and R.3 herein, who are the driver and owner of the offending vehicle, are jointly and severally liable to pay the compensation to the injured, however fastened the liability on the appellant-Insurance Company to pay compensation to the first respondent-injured, without assigning any reasons.

The issue fell for consideration of this Court in this appeal is ‘whether the appellant, being the insurer, is liable to pay the compensation for the injuries sustained by the gratuitous passenger?’

Travelling of the first respondent in the offending vehicle is not in dispute. Due to accident occurred, he received simple and grievous injuries for which he spent amounts for his treatment. The specific contention of the appellant is that the first respondent was travelling as a gratuitous passenger in the offending vehicle in contravention of the terms and conditions of Ex.B.1 Policy. No contra evidence was adduced by the first respondent-claimant to disprove the said contention. Hence, as per the evidence available on record, the Tribunal rightly held that the first respondent was a gratuitous passenger of the offending vehicle. Allowing the gratuitous passenger in the DCM van is in violation of Ex.B.1-policy as it covers the damages caused to the third party only. Hence, following the principle of ‘pay and recover’, the appellant-insurance company is directed to pay the compensation to the claimant initially and later recover the same from the owner of the vehicle i.e. third respondent herein, as the third respondent, being the owner of the offending vehicle, held vicariously liable for the acts of his driver.

As regards quantum of compensation, the Tribunal considering the injuries sustained by the first respondent and amounts spent by him for his treatment, has rightly granted

Rs.39,000/- along with interest @ 9% per annum. The contention of the learned counsel for the appellant that granting of 9% interest is excessive and contrary to the provisions of Section 171 of M.V. Act and the first respondent is entitled only for reasonable rate of interest, cannot be countenanced as the rate of interest granted by the Tribunal was in accordance with the bank interest rate prevailing at the relevant period.

Accordingly, the appeal is partly allowed directing the appellant to pay the compensation to the 1st respondent within a period of two months from the date of receipt of a copy of this judgment by following the principle of 'pay and recover'.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

23.11.2018
sur