

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.1811 OF 2011

AND

C.R.P.No.3747 OF 2011

COMMON ORDER:

C.R.P.No.1811 of 2011 is filed under Section 115 C.P.C by the petitioner/Reliance General Insurance Co. Ltd.,/respondent No.2 against the judgment dated 30.08.2010 in M.V.O.P.No.108 of 2008 passed by the Chairman, Motor Accidents Claims Tribunal-cum-XI Additional District and Sessions Judge, (FTC), Guntur at Tenali (for short 'the Tribunal') awarding compensation of Rs.7,000/- against the claim of Rs.1,50,000/-.

2. C.R.P.No.3747 of 2011 is filed under Section 115 C.P.C by the petitioner/Reliance General Insurance Co. Ltd.,/respondent No.2 against the judgment dated 30.08.2010 in M.V.O.P.No.130 of 2008 passed by the Tribunal awarding compensation of Rs.7,000/- against the claim of Rs.1,00,000/-.

3. The 1st respondent in both CRPs hereinafter will be referred to as 'claimants'.

4. The claimants are passengers travelling in an auto bearing No. AP 26 X 0698 at about 07.00 p.m. on 29.11.2007 boarded at Mulpur to go to Jampani Village. When the driver of the auto drove it in a rash and negligent manner and dashed against the tractor and trailer bearing No.AP 7 W 5818 and AP 7U 7445, which was coming in opposite direction, the claimants sustained severe injuries all over the body including fracture to right leg and other passengers travelling in the same auto also sustained injuries including death of one Sumalatha. Crime No. 90 of 2007 for the offences punishable under Sections 337 and 304-A IPC was

registered against the driver of the vehicle. It is also contended that these claimants were earning Rs.3,000/- per month as on the date of accident and that they were hale and healthy on the date of accident and that the injuries sustained by them are permanent. Hence, claim petitions.

5. The 2nd respondent herein remained exparte. The petitioner herein filed counter denying material allegations *inter alia* contending that the insurer of the tractor and trailer was not impleaded to the claim petition and on the ground of non joinder of necessary party to the claim petitions, the petitions are liable to be dismissed. It is also contended that the driver was not holding valid and effective driving license at the time of accident and the compensation claimed by the claimants is excessive.

6. The 3rd respondent herein filed counter denying the material allegations *inter alia* contending that he is not the owner of the tractor and trailer as he sold away the same to an unknown person of Vinukonda Village, who in turn sold it to another unknown person of Tekkellapadu Village and who in turn, sold it to one Gose Venkata Rao. Therefore, the 3rd respondent is not liable to pay compensation.

7. Based on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the accident took place due to rash and negligent driving of the driver of the (1) Auto No.AP 26 X 0698 and (2) Tractor and Trailer Nos.AP 7W 5818 and AP 7U 7445?
- 2) Whether the petitioner is entitled for compensation, if so, what amount and from which of the respondents?
- 3) To what relief?

8. Upon hearing argument of both counsel, the Tribunal held issue No.1 that the accident occurred due to rash and negligent driving of drivers of the vehicles in view of charge sheet filed by the police after due investigation and awarded compensation of Rs.7,000/- each to the claimants.

9. Assailing the awards passed by the Tribunal, the present revision petitions are filed as no appeal is maintainable, mainly contending that the accident occurred due to rash and negligent driving of drivers of both vehicles and finding of the Court below is erroneous on the face of record in view of the evidentiary admissions available on record with regard to the manner of accident. But the Tribunal erroneously recorded the finding against the petitioner herein and committed an error in awarding compensation against the petitioner alone.

10. The quantum of compensation awarded by the Tribunal is not in dispute. The only defence set up by the petitioner is that the accident was occurred due to rash and negligent act of the drivers of both vehicles and that the Tribunal concluded that the accident occurred due to negligent driving of the drive of the auto wherein the claimants are travelling and in such a case, the petitioner is liable to pay only part of the compensation proportionate to share of contributory negligence, but not the entire compensation. When plea of contributory negligence is raised the claimants can proceed against any one of the tortfeasors as held by the Apex Court in **T.O.Anthony v Karvarnan and others**¹ both the tortfeasors are liable to pay the compensation.

¹ 2008 ACJ 1165

11. Based on the material available on record, the Tribunal recorded a finding that the accident occurred due to negligence of driver of the auto and such finding cannot be disturbed while exercising power under Article 227 of the Constitution of India since the powers of this Court are limited and this Court can interfere with such an order when there is a perversity or grave error in the order transgressing its jurisdictional limits, in view of the judgment in **Raj Kumar Bhatia v Subhash Chandra Bhatia**².

12. In view of earlier judgment in **Sadhana Lodha v National Insurance Com. Limited**³ the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. Hence, this Court cannot disturb the fact findings recorded by the Tribunal while exercising power under Article 227 of the Constitution of India.

13. In view of the law declared, I find no error in the finding recorded by the Tribunal warranting interference of this Court while exercising power under Article 227 of the Constitution of India and consequently, the revision petitions are devoid of merits and liable to be dismissed.

² 2018(2) SCC 87 (FB)

³ 2003(3) SCC 524

14. In the result, the civil revision petitions are dismissed confirming the judgments dated 30.08.2010 in M.V.O.P.Nos.108 and 130 of 2008 passed by the Chairman, Motor Accidents Claims Tribunal-cum-XI Additional District and Sessions Judge, (FTC), Guntur at Tenali. There shall be no order as to costs.

Pending miscellaneous petitions in the petitions, if any, shall stand closed.

M. SATYANARAYANA MURTHY,J

27.02.2018
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