

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

CIVIL MISCELLANEOUS APPEAL No. 2910 of 2004

Between:

Nandi Narsimlu

... Appellant

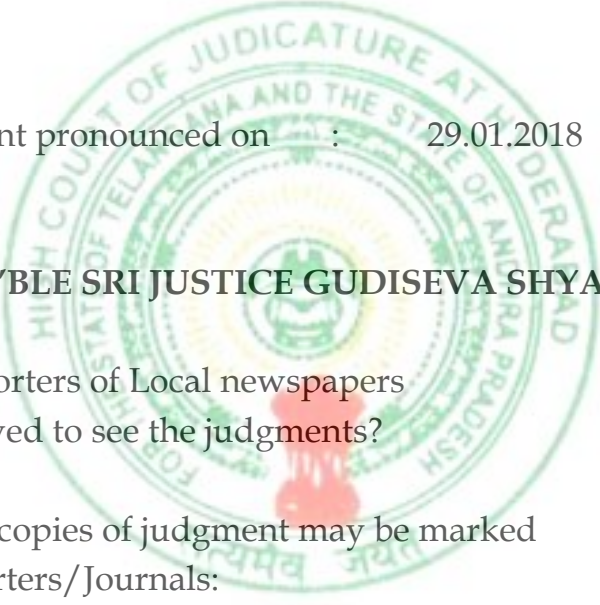
AND

1. K. Ramana Reddy and another

.... Respondents

Date of Judgment pronounced on : 29.01.2018

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

- 
1. Whether Reporters of Local newspapers : Yes / No
May be allowed to see the judgments?
 2. Whether the copies of judgment may be marked : Yes / No
to Law Reporters/Journals:
 3. Whether The Lordship wishes to see the fair copy : Yes / No
Of the Judgment?

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**CIVIL MISCELLANEOUS APPEAL No. 2910 of 2004**

% 29.01.2018

Nandi Narsimlu

.....Appellant

Versus

\$ K. Ramana Reddy and another

..... Respondents.

< GIST:

> HEAD NOTE:

! Counsel for the Appellant : Venkateswar Varanasi

^ Counsel for the Respondents : V. Srinivasa Rao for R2

? Cases referred

¹ AIR 2017 SC 1204

² AIR 2003 SC 2877

³ (2004) 2 SCC 1

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL MISCELLANEOUS APPEAL No. 2910 of 2004

JUDGMENT:

This appeal is arising out of the Order and Decree dated 15.07.2003 passed in M.V.O.P.No.263 of 2001 by the Chairman, Motor Accidents Claims Tribunal – Additional District, at Nizamabad.

2. Brief facts of the case are that on 04.01.2000, the appellant (claimant) was travelling in trailer bearing No.AP-25T-3466 attached to tractor bearing No.AP-25T-3465 from Dharmaraopet village towards Kamareddy. When the tractor reached the limits of Adloor Yellareddy on NH-7, at about 9:00 PM, the driver of the tractor drove the tractor in a rash and negligent manner due to which the tractor trailer went off the road and the appellant along with others sustained multiple grievous injuries. The appellant filed a claim petition M.V.O.P.No.263 of 2001 before the Tribunal, claiming compensation of Rs.1,00,000/- on account of the permanent disability suffered by him due to the injuries received in the accident. The claim was made against the 1st respondent-owner and the 2nd respondent-insurer. The 1st respondent remained ex parte, and the 2nd respondent filed its written statement denying its liability on the ground that the appellant traveled as an unauthorized passenger in the tractor-trailer. In its written statement, the 2nd respondent has also disputed the rash and negligent driving by the driver of the tractor-trailer, and also contended that the claim was highly excessive and, therefore, sought for dismissal of the claim petition.

3. The Tribunal, on consideration of the evidence of PWs.1 and 2, RW1, and documents Exs.A1 to A6 and Ex.B1, has held that the accident occurred due to the rash and negligent driving by the driver of the tractor-trailer, and awarded compensation of Rs.15,000/- with interest at 9% per annum, and held respondent No.1 alone liable to

pay compensation, and dismissed the claim against 2nd respondent. Aggrieved by the quantum of compensation, and also dismissal of claim against 2nd respondent-insurance company, the appellant has preferred this appeal.

4. Heard Sri Venkateswar Varanasi, learned counsel for the appellant-claimant, and Sri V. Srinivasa Rao, learned counsel for the 2nd respondent-insurance company.

5. Sri Venkateswar Varanasi, learned counsel for the appellant contended that the Tribunal dismissed the claim against the insurance company on the ground that the appellant traveled in the tractor-trailer as an unauthorized passenger. To substantiate his argument, the learned counsel placed reliance on the decision in **Manuara Khatun v. Rajesh Kumar Singh**¹ and submitted that in **Manuara Khatun**, the deceased was a gratuitous passenger, but however, the Hon'ble Supreme Court granted compensation in that case holding that the liability of the insurance company cannot be exonerated and, therefore, sought for ordering pay and recovery against the 2nd respondent in the present case.

6. Sri V. Srinivasa Rao, learned counsel for the 2nd respondent contended that the appellant traveled in the tractor-trailer as an unauthorized passenger and there is no coverage of risk for the appellant, and no extra premium was paid by the 1st respondent owner for coverage of risk of appellant and, therefore, the Tribunal has rightly dismissed the claim against the 2nd respondent and the said order does not require any interference.

7. On considering the arguments advanced by both the learned counsel, there are three issues that arise for consideration in this appeal. First, whether the appellant is entitled for enhancement of

¹ AIR 2017 SC 1204

compensation; second, whether the appellant traveled as gratuitous passenger in the tractor-trailer; and third, whether pay and recovery can be ordered against the insurer.

8. Admittedly, this is a claim filed under Section 166 of the Motor Vehicles Act, and the rash and negligent act on the part of the driver of the crime vehicle is proved. The appellant has received injuries to head, chest and also a fracture to his right leg. PW2 is Dr. L. Ramulu, Orthopedic Surgeon. It is his evidence that he examined the appellant on 08.08.2002 and issued Ex.A6 disability certificate after assessing the permanent partial disability suffered by the appellant due to post traumatic stiffness of right knee. The Tribunal observed in paragraph 13 of its judgment that on perusing the Wound Certificate-Ex.A3, it is clear that the appellant sustained two injuries which are simple in nature. Therefore, the Tribunal disbelieved the evidence of Medical Officer-PW2, and the disability certificate Ex.A6, and awarded compensation of Rs.10,000/- towards two simple injuries, and Rs.5,000/- towards medicines, extra nourishment and pain and suffering. Therefore, there are no valid grounds to interfere with the findings of the Tribunal in this regard, as the very nature of injuries sustained by the appellant are simple and, therefore, the appellant is not entitled for enhancement of compensation.

9. It is pertinent to note that the Tribunal has observed that the appellant traveled in the tractor-trailer of respondent No.1 as a gratuitous passenger to go to Kamareddy for watching a movie. There is no coverage of risk for the appellant under the insurance policy. No extra premium was paid by the 1st respondent to cover the risk of the appellant. Section 149 of the Motor Vehicles Act, 1988 (for short, 'the Act') deals with the duty of insurers to satisfy judgments and awards against persons insured of third party risks. In **Manuara Khatun**, the deceased therein traveled as a gratuitous passenger in a private car, whereas, in the instant case, the deceased traveled as an

unauthorised passenger in a tractor-trailer and, therefore, the decision rendered in the case of **Manuara Khatun** is not applicable to the present case.

10. In **Ramashray Singh v. New India Assurance Co. Ltd.**², it was held as under:

Consequently, although the appellant's claim under the insurance policy arose under the Workmen's Compensation Act, since the concerned employee was not engaged in the capacity of driver in respect of whom alone premium was paid apart from the passengers, his claim is unsustainable.

11. Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923. The provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger traveling in a goods carriage and the insurer would have no liability therefor. The said proposition of law was laid in **Oriental Insurance Company Ltd. v. Devi Reddy Konda Reddy**³. The goods carriage carrying any passenger is not contemplated under the Motor Vehicles Act, 1988. In **National Insurance Company Ltd. v. Baljit Kaur**⁴, it was held that the intention of Parliament could not have been that the words 'any person' occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. In the instant case, the appellant traveled in the tractor-trailer as an unauthorized passenger and further there is no insurance coverage for the appellant under the insurance policy.

² AIR 2003 SC 2877

³ 2003 ACJ 468

⁴ (2004) 2 SCC 1

12. In view of the ratio laid down in the foregoing decisions, and as the appellant traveled as an unauthorized passenger in the crime vehicle, tractor-trailer, and there being no insurance coverage for the appellant under the insurance policy, this is not a fit case to direct the 2nd respondent-insurance company to first pay and then recover. Therefore, the appeal is liable to be dismissed.

13. **IN THE RESULT**, the appeal is dismissed, confirming the Order and Decree dated 15.07.2003 passed in M.V.O.P.No.263 of 2001. No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

29th January, 2018

KSM

GUDISEVA SHYAM PRASAD, J



THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



Civil Miscellaneous Appeal No. 2910 of 2004

29th January, 2018

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