

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.983 OF 2006

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the appellant/petitioner challenging the judgment and award, dated 07.11.2005 passed in O.P.No.428 of 2001 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nizamabad (for short, 'the Tribunal').

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows:

On the intervening night of 07/08.11.2000 at about 1:00 AM, the petitioner boarded the lorry bearing No.ABT 3085 at Nizamabad to go to Morthad side along with other labourers. When the lorry reached near Lakora Village, the driver of the lorry had driven the same in a rash and negligent manner and dashed against the road side tree. Due to accident, the petitioner sustained injuries on the head and other parts of the body. The petitioner took treatment as inpatient in Government Hospital, Armoor and Nizamabad. The petitioner spent an amount of Rs.50,000/- towards medicines and treatment. At the time of accident, the petitioner was aged about 20 years and used to earn Rs.6,000/- per month. Due to injuries, the petitioner could not attend the work, thereby, lost her income. The lorry bearing No.ABT 3085, which belongs to the first respondent, was insured

with the second respondent vide cover note No.049835 with effect from 30.10.2000 to 29.10.2001. The insurance policy was in force as on the date of accident; therefore, the second respondent has to indemnify the liability of the first respondent. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1,20,000/- to the petitioner.

4. The first respondent filed counter denying all the averments made in the petition *inter alia* contending that there was no negligence on the part of the driver of the lorry to cause the accident. The lorry bearing No.ABT 3085, which belongs to this respondent, was insured with the second respondent insurance company at the time of accident. Therefore, the second respondent alone is liable to pay the compensation to the petitioner.

5. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that the amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. The first respondent violated the terms and conditions of the policy; therefore, this respondent is not liable to pay compensation to the petitioner. Hence, the petition is liable to be dismissed.

6. Basing on the above pleadings, the Tribunal framed the following issues:

- (1) Whether the accident was due to rash and negligent driving of the Lorry bearing No.ABT 3085 driven by its driver?
- (2) Whether the petitioner is entitled to compensation? If so, to what amount and from whom?
- (3) To what relief?

7. During the course of enquiry, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.4 were marked. On behalf of the second respondent, RW.1 was examined and Ex.B.1 was marked.

8. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ABT 3085, which resulted in injuries to the petitioner and awarded compensation of Rs.12,500/- to the petitioner by fastening the liability on respondent No.1 alone as the policy does not cover the risk of labourers. The Tribunal dismissed the petition against the second respondent.

9. Feeling aggrieved by the judgment and award of the Tribunal, the petitioner preferred the present appeal.

10. Learned counsel for the petitioner-appellant strenuously submitted that Ex.B.1 policy was in force as on the date of accident; therefore, the second respondent has to indemnify the liability of the first respondent. He further submitted that the Tribunal dismissed the petition against the second respondent on assumptions and presumptions. He further submitted that the judgment and award of the Tribunal is not sustainable either on facts or in law so far as dismissing of the petition against the second respondent is concerned.

11. *Per contra*, learned counsel for the second respondent submitted that the first respondent has not paid the premium covering the risk of the labourers and the same was considered by the Tribunal in right perspective. He further submitted that there

are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal.

12. Now the point that arises for consideration in this appeal is:

Whether the Tribunal is not justified in dismissing the petition against the second respondent?

13. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ABT 3085. The finding recorded by the Tribunal on this aspect became final in view of non-filing of the appeal by the respondents.

14. At the time of arguments, learned counsel for the appellant-petitioner, in all fairness, submitted that he is not disputing the quantum of compensation awarded by the Tribunal. Therefore, this Court is of the considered view that the compensation awarded by the Tribunal is just and reasonable.

15. The oral testimony of RW.1 coupled with Ex.B.1 clearly reveals that the lorry bearing No.ABT 3085, which belongs to the first respondent, was insured with the second respondent as on the date of accident. A perusal of the record clearly reveals that the first respondent paid premium covering the risk of driver and cleaner of the crime vehicle. The insurance company is liable to pay compensation provided the owner of the crime vehicle pays the premium covering the risk of the employees. Admittedly, the first respondent did not pay the premium covering the risk of the employees engaged by him. In such circumstances, whether the Tribunal is justified in dismissing the petition against the second

respondent? In order to resolve the issue, this Court is placing reliance on the decision in **The New India Assurance Co. Ltd., rep. by its Branch Manager Vs. Lodya Shankar and others**¹, wherein the relevant portion of paragraph No.7 reads as follows:

“.....Unless there is a contract between the owner of the motor vehicle and the insurer, the insurer cannot be made liable for payment of compensation due from the owner of the motor vehicle to a third party. So, unless the owner of the vehicle pays premium to cover the risk of the coolies being transported in his lorry, the insurer cannot be made liable for payment of the compensation due to them from their owner. When second respondent insured his vehicle with the appellant to cover the risk of his driver and cleaner only, it cannot be made liable for payment of the compensation payable by the second respondent to his coolies being transported in his lorry, who are not covered by the policy issued by it.”

16. As per the principle enunciated in the case cited supra, the insurance company is not liable to pay compensation to the victims of road accident if the policy does not cover risk of such persons.

17. The facts of the case on hand are almost identical to the facts of the case cited supra.

18. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that there is no contractual obligation on the part of the second respondent to indemnify the liability of the first respondent so far as coolies engaged on the lorry. The Tribunal has considered the recitals of Ex.B.1 policy in right perspective and arrived at a conclusion that there is no contractual obligation on

¹ 2004 (3) ALD 400

the part of the second respondent to indemnify the liability of the first respondent. I am fully endorsing the findings recorded by the Tribunal. There are no grounds much less valid grounds to interfere with the judgment and award passed by the Tribunal.

19. In the result, the Appeal is dismissed. There shall be no order as to costs.

20. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 27.03.2018
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