HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.362 of 2012

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellant-petitioner seeking enhancement of compensation, challenging the judgment and decree dated 23.09.2011 in M.V.O.P.No.114 of 2008 passed by the Chairman, Motor Accidents Claims Tribunal (II Additional District Judge), East Godavari at Amalapuram (for brevity "the Tribunal"), awarding compensation of Rs.5,27,000/- as against the claim of Rs.6,00,000/- laid by him under Section 166 of the Act, for the injuries sustained by him in a motor vehicle accident that occurred on 18.03.2008 at Karimatta village, Pusapati Raga Mandal, Vizianagaram District.

2. Appellant is the petitioner, respondent No.1 is the driver, respondent No.2 is the Owner and respondent No.3 is the insurer of Eicher Van bearing No.AP37X 6197, which met with the accident. For the sake of convenience, the parties are referred to as they were arrayed in the O.P. before the Tribunal.

3. The brief facts of the case are that, on 17.03.2008 while the petitioner was travelling in the Lorry (Eicher Van bearing No.AP37X 6197) as its driver, after unloading the grapes on

18.03.2008, the 1st respondent had started to go to Marteru from Srikakulam and when the lorry came near Karimatta village, Pusapati Rega Mandal, the 1st respondent drove it in a rash and negligent manner and dashed against a stationed lorry, as a result of which the petitioner's both legs were completely fractured and he sustained multiple injuries. He was admitted in Government Headquarters Hospital, Vizianagaram, and later he was shifted to V.N. Nursing Home, Amalapuram. The petitioner underwent treatment for a period of two months and during the course of treatment, his right leg was amputated upto below knee and he spent a sum of Rs.1,00,000/- towards medical expenses and he suffered permanent disability. The petitioner laid a claim of Rs.6,00,000/- towards compensation for the injuries sustained by him in the said accident. The 1st respondent-driver of the lorry filed his counter stating that he has been working as a driver for the past 3 years under the 2nd respondent and that as he is having valid and effective driving licence and also having insurance policy, the 3rd respondent – insurer is liable to pay compensation to him. The 2nd respondent – owner has adopted the said counter by filing a Memo in that regard. The 3rd respondent – insurer filed a written statement denying its liability, contending that the driver of the crime vehicle was not having valid and effective driving licence at the time of accident and that the 2nd respondent – owner is not having valid permit to ply the vehicle on the road. It is denied that the petitioner was a co-driver of the crime vehicle and hence sought for dismissal of the claim petition. The Tribunal, on consideration of the evidence of the witnesses PWs.1 to 4 adduced on behalf of the petitioner, and RWs.1 and 2 adduced on behalf of the respondents, and also the documentary evidence under Exs.A.1 to A.11 and Exs.X.1 to X.3 filed by the petitioner and also Exs.B.1 and B.2 filed on behalf of the respondents, by the aforesaid judgment and decree dated 23.09.2011, partly allowed the claim petition granting compensation of Rs.5,27,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit against respondent Nos.1 and 2 jointly and severally, while dismissing the claim against respondent No.3 – insurer. Aggrieved by the said judgment and decree of the Tribunal in exonerating the 3rd respondent – insurer from paying the compensation, the petitioner has filed the present appeal.

4. Heard learned counsel for the respective parties and perused the material on record.

5. The point for consideration in this appeal is, whether the 3rd respondent – Insurance Company is liable to pay compensation to the petitioner?

6. Ms. Anusha, counsel representing Sri Ch. Dhanamjaya, learned counsel for the petitioner, contended that the

petitioner is travelling in the crime lorry as a second driver, since he is travelling in the capacity of a spare driver, the insurer is liable to pay compensation to him. It is further contended that the petitioner is a third party and, therefore, the 3rd respondent – insurer is liable to pay compensation to the third parties also.

7. In support of her contention, learned counsel for the petitioner relied upon the decisions of the Apex Court in MANAGER, NATIONAL INSURANCE CO. LTD. V. SAJU P.PAUL AND ANOTHER[1] and MANUARA KHATUN V. RAJESH KUMAR SINGH AND OTHERS[2] and contended that even in case of a claimant, who was travelling in a goods vehicle as a spare driver though he was employed as a driver in another vehicle owned by the owner of the vehicle under the policy of insurance, the insurer is liable to pay compensation.

8. On the other hand, Sri V. Srinivasa Rao, learned Standing Counsel for the 3rd respondent – insurer, submitted that the insurer is not liable to pay compensation to the petitioner as he is not a third party. It is further contended that though the owner of the crime lorry stated that the petitioner was working as a spare driver, there is no material on record to show that he was a spare driver. Moreover, there is no insurance coverage by way of payment of additional premium by the owner to cover the risk of spare driver. A

[1] 2013 (2) SCC 41
[2] AIR 2017 SC 1204

perusal of Ex.B.2 – Copy of Insurance Policy shows that the petitioner has paid premium of Rs.5,920/- to cover the risk of third party and another sum of Rs.100/- to cover the risk of owner-cum-driver. Since the petitioner is neither the owner nor driver, who was travelling in the crime lorry at the time of accident, but he was travelling in the crime lorry only as a spare driver and, therefore, there is no coverage of insurance for spare drivers.

9. On consideration of the contentions of the learned counsel for the respective parties, it is to be seen that though learned counsel for the petitioner placed reliance on the decisions in SAJU P.PAUL's case (supra 1) and MANUARA KHATUN's case (supra 2), there is no additional premium paid by the owner to cover the risk of spare driver, the coverage of the insurance policy was only for owner-cum-driver and not for spare driver. Therefore, the contention of the learned counsel for the petitioner that since the petitioner is travelling in the crime vehicle as a third party, his liability is covered, cannot be accepted and the aforesaid judgments of the Apex Court are not applicable to the facts of the present case. As it is the very contention of the learned counsel for the petitioner that the petitioner is travelling in the capacity of a spare driver, the 3rd respondent – insurer has no liability to pay compensation to him. Therefore, there are no valid grounds to interfere with the impugned judgment rendered by

the Tribunal exonerating the 3rd respondent – insurer from payment of compensation.

10. In the result, the Civil Miscellaneous Appeal is dismissed. No order as to costs.

11. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

23.02.2018.
Msr

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