

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2304 OF 2006

JUDGMENT:

This appeal is filed by the appellant/3rd respondent/insurance company aggrieved by the order and decree dated 15.06.2006 passed in M.A.T.O.P.No.761 of 2002 by the Motor Accidents Claims Tribunal (IV Additional District Judge) (FTC-III), Khammam (for short, the Tribunal).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The brief facts of the case are that on 20.05.2001 at 17.30 hours the petitioner along with her mother Bokka Showramma and uncle Siddipogu Musalaiah went to Athkur Village on the occasion of marriage settlement and while they were returning, they boarded the crime vehicle to go to Vangavedu and when the said crime vehicle reached the outskirts of Kirshnapuram Village at Palavagu bridge, the 1st respondent drove the crime vehicle in rash and negligent manner with a high speed and dashed against the bridge, due to which the crime vehicle turned turtle in the Palavagu, as a result of which, the petitioner and others sustained injuries. In the said accident, the petitioner sustained grievous and simple injuries all over her body. Immediately after the

accident, she was shifted to Government Hospital, Madhira, where the duty doctors referred the petitioner to Government Head Quarters Hospital, Khammam, for better treatment. She submitted that during the course of treatment, she spent an amount of Rs.20,000/- towards medical and other expenses. She further submitted that by the date of the accident, she used to earn Rs.90/- per day and was hale and healthy. Due to the injuries, she suffered pain and suffering, loss of earnings and mental agony. Hence, the petitioner filed the claim petition claiming compensation of Rs.1,00,000/-, payable by all the respondents, being the driver, owner and insurer of the crime vehicle.

4. Before the Tribunal, respondents 1 & 2 remained *ex parte*. The 3rd respondent filed counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral evidence of P.Ws.1 to 4 and R.W.1 and the documentary evidence of Exs.A-1 to A-5 and Exs.B-1 to B-9 and Ex.C-1, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle and awarded total compensation of Rs.60,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit, payable by respondents 1 to 3 jointly and severally.

Aggrieved by the fastening of liability on the insurance company, the appellant/3rd respondent/insurance company filed the present appeal.

6. Heard Smt. Satya Manjula, learned counsel for the appellant/3rd respondent/insurance company and Sri T.Prabhakar, learned counsel for the 1st respondent/claimant. Perused the material record.

7. Smt. Satya Manjula, learned standing counsel for the appellant/insurance company contended that since the claimant was gratuitous passenger in a goods vehicle, in which case the liability for payment of compensation for death or body injury to the passengers of such goods vehicle would not be covered, hence the principle of pay and recover would not apply.

8. Sri T.Prabhakar, learned counsel for the 1st respondent/claimant submits that the order passed by the Tribunal is well considered and needs no interference of this Court. He further submits that though respondent No.1/claimant travelled in the crime vehicle as an unauthorized passenger, the liability of the insurance company cannot be exonerated and hence, the Tribunal has rightly passed the Award, and the same does not need any interference. He further submits that even, for the sake of argument, the liability of insurance company is exonerated,

the insurance company is still liable to pay the claimant at the first instance and then recover from the owner of the vehicle in view of the decision of the Apex Court in **Anu Bhanvara Vs. Iffco Tokio General Insurance Company Limited¹**.

9. Having considered the rival contentions, it is not in dispute that the crime vehicle is a goods carriage vehicle; and at the time of accident, the claimant was traveling on the crime vehicle as a gratuitous passenger, and there is no insurance coverage covering the risk of the claimant. It is also not in dispute that the insurance policy (Ex-B.1) was valid and subsisting as on the date of accident. Therefore, it can be said that respondent No.1 travelled as a gratuitous passenger in the crime vehicle. In **Anu Bhanvara's** case (supra), the Apex Court while dealing with the case of gratuitous passengers, directed the insurer to pay the awarded sum to the claimants therein and recover the same from the insured in the same proceedings. In view of the above, as respondent No.1 travelled as a gratuitous passenger in the crime vehicle, it is just and reasonable to invoke the principle of 'pay and recover'. Since the insurance policy only covers respondents 2 & 3, being the driver and owner of the crime vehicle, and the insured is not covered under the policy and no liability can be fastened against the appellant/3rd respondent/insurance company. However, since the crime

¹ 2019(5) ALD SC 287

vehicle is covered under the valid insurance policy, the insured cannot be deprived of the compensation. Therefore, the principle of 'pay and recover' should be applied. Hence, the finding of the Tribunal directing the appellant/3rd respondent/insurance company and respondents 2 & 3, being the driver and owner of the crime vehicle, to deposit the compensation amount jointly and severally is set aside.

10. In view of the foregoing discussion, the order and decree dated 15.06.2006 passed in M.A.T.O.P.No.761 of 2002 by the Motor Accidents Claims Tribunal (IV Additional District Judge) (FTC-III), Khammam, is modified to the extent of directing the appellant/3rd respondent/insurance company to pay the compensation amount to the claimant/respondent No.1 in the first instance, and recover the same from respondents 2 & 3/driver & owner of the crime vehicle. Except the said modification, the order and decree passed by the Tribunal shall remain unchanged.

11. Accordingly, the appeal is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.AMARNATH GOUD, J

Date: 6th December, 2019

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