

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.899 OF 2006

JUDGMENT:

This appeal is filed by the appellant/claimant aggrieved by the order and decree dated 20.01.2006 passed in M.V.O.P.No.99 of 2003 by the Motor Accident Claims Tribunal (VII Additional District Judge) (FTC), Nizamabad, at Bodhan (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 the on 23.04.2002 at about 12.30 a.m., the petitioner was traveling in the mini lorry belonging to the 1st respondent and insured with the 2nd respondent, from Bommireddypalli to Kurnool side, when the said mini lorry reached Bommireddypalli Village bridge, the driver of the lorry drove the same in a rash and negligent manner and dashed a tractor from its backside, as a result of the accident, the petitioner sustained multiple injuries. By the date of the accident, the petitioner was earning Rs.10,000/- per month and used to contribute the same to his family members, but due to the accident, the petitioner has sustained permanent disability. Hence, the petitioner filed the claim petition claiming compensation of Rs.2,00,000/-, payable by both the respondents.

4. Before the Tribunal, the 1st respondent remained *ex parte*. The 2nd respondent filed written statement 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.W.1 and R.W.1 and the documentary evidence of Exs.A-1 to A-70 and Ex.B-1, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the mini lorry belonging to the 1st respondent and awarded total compensation of Rs.27,000/-, i.e., Rs.20,000/- towards one grievous injury, Rs.2,000/- towards one simple injury, Rs.3,000/- towards pain & suffering and Rs.2,000/- towards other incidental expenses, with interest @ 7.5% per annum from the date of petition till the date of realization, payable by the 1st respondent only. The petition against the 2nd respondent was dismissed. Aggrieved by the same, the appellant filed the present appeal.

6. Heard Sri Azar Sravan Kumar, learned counsel for the appellant/claimant and Sri N.J.Sunil Kumar, learned standing counsel for the 2nd respondent. Perused the material record.

7. Sri N.J.Sunil Kumar, learned standing counsel for the 2nd respondent/insurance company, contended that since the

claimant is the owner of the goods and the Tribunal came to the conclusion that he is a gratuitous passenger and accordingly, the Tribunal has held that the 2nd respondent/insurance company is not liable to pay the compensation since he is a gratuitous passenger and there is a violation of the policy conditions by the owner and driver of the vehicle. Hence, the liability for payment of compensation for death or body injury to the passengers of such goods vehicle would not be covered and the principle of pay and recover would not apply.

8. Sri Azar Sravan Kumar, learned counsel for the claimant, submits that the order passed by the Tribunal is well considered and needs no interference of this Court. He further submits that though the appellant/claimant travelled in the mini lorry as an unauthorized passenger, the liability of the 2nd respondent/insurance company cannot be exonerated. 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 Limited**¹.

¹ 2019(5) ALD SC 287

9. This Court *prima facie* is convinced that the order of the Tribunal that the claimant has failed to establish that he is the owner of the vehicle.

10. Having considered the rival contentions, it is not in dispute that the mini lorry in question is a goods carriage vehicle; and at the time of accident, the claimant was traveling on the mini lorry as a gratuitous passenger, and since the vehicle is insured and Ex.B-1-policy clearly indicates that the accident has occurred during the policy period, it can be said that the appellant travelled as a gratuitous passenger in the crime vehicle. In **Anu Bhanvara's** case, 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 the appellant/claimant travelled as a gratuitous passenger in the mini lorry, it is just and reasonable to invoke the principle of 'pay and recover'. Therefore, the finding of the Tribunal directing the 1st respondent/owner to deposit the compensation amount is set aside.

10. In view of the foregoing discussion, the judgment and decree dated 20.01.2006 passed in M.V.O.P.No.99 of 2003 by the Motor Accident Claims Tribunal (VII Additional District Judge) (FTC), Nizamabad, at Bodhan, is modified to the extent of directing the 2nd respondent/insurance company to pay the

compensation amount to the appellant/claimant in the first instance, and recover the same from the 1st respondent/owner of the mini lorry. Except the said modification, the judgment and decree passed by the Tribunal shall remain unchanged.

11. Accordingly, the M.A.C.M.A. 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: 11th November, 2019

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