

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No. 3470 OF 2005

JUDGMENT:

This appeal is preferred by the appellant-insurance company, questioning the Order and Decree of the Motor Accident Claims Tribunal-cum-III Additional District Judge, Karimnagar (for short, the Tribunal) in O.P.No.337 of 2001, dated 09-12-2002.

2. The brief facts of the case are that on 29-06-1995 in the morning hours, respondent No.1/claimant came to bus stage of Medaram to go to Karimnagar with her three gunny bags of onions to sell the same at Karimnagar market. While respondent No.1 was waiting at Medaram bus stage, at about 8.00 am., one oil tanker bearing No.AP36T 1661, going towards Karimnagar side, stopped and driver of the tanker offered the claimant and others to board the same on payment of fare. Accordingly, respondent No.1 and other boarded the oil tanker. When it reached near Mallapur, the driver of the tanker drove it in a high speed and in a rash and negligent manner, as a result, the tanker turned turtle, due to which, respondent No.1 and other sustained grievous injuries and her left hand was completely cut-off up to arm level. Respondent No.1 filed the aforesaid OP against driver and owner of the tanker (respondent Nos.2 and 3 herein) and also insurer (appellant herein), claiming compensation of Rs.1,50,000/- for the injuries sustained by her.

3. Before the Tribunal, driver of the tanker, remained *ex parte*. The owner and insurer of the tanker filed their separate counters denying the allegations and contended that the amount claimed is

highly excessive and that they are not liable to pay the compensation and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the tanker and awarded total compensation of Rs.75,000/- under various heads, with interest at the rate of 9% per annum. Aggrieved by the said order, the appellant-insurance company filed the present appeal.

5. Sri M.Vara Prasada Rao, learned counsel appearing for the appellant-insurance company, submits that respondent No.1 travelled in the tanker as a gratuitous passenger and therefore, the insurance company is not liable to pay any compensation to respondent No.1.

6. Sri K.Jagadishwar Reddy, learned counsel appearing for respondent No.1, submits that the accident took place due to the rash and negligent driving of the driver of the tanker, which was insured with the appellant-insurance company and therefore, the owner and insurer of the tanker are liable to pay the compensation jointly and severally.

7. Sri M.Venkat Reddy, learned counsel appearing for respondent No.3, submits that the tanker was insured with the appellant during the relevant period of accident and hence, the appellant-insurance company is liable to pay the compensation awarded by the Tribunal.

8. A perusal of the record reveals that the Tribunal has passed the award, fixing the liability of the driver, owner and insurer of the tanker jointly and severally. But, it appears that the claimant has travelled in the tanker as a gratuitous passenger and therefore, the appellant-insurance company is not liable to pay the compensation to the claimant. The Apex Court in **Anu Bhanvara V. Iffco Tokio General Insurance Company Limited**¹ held that the principle of “pay and recover” should be directed to be invoked and insurance company shall be liable to pay the awarded compensation to the claimants, however, the insurance company shall have the right to realize the said amount of compensation from the driver and owner of the vehicle in accordance with law.

9. In view of the settled law rendered by the Apex Court in the above decision, the appellant-insurance company is directed to pay the compensation to respondent No.1/claimant first and recover the same from respondent No.3/owner of the tanker thereafter. The Tribunal granted interest @ 9% per annum and the same is reduced to 7.5% per annum. Except the above modification, the order of the Tribunal remains unchanged.

10. With the above observations, the Motor Accident Civil Miscellaneous Appeal is partly allowed. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

T.AMARNATH GOUD, J

Date: 23-10-2019
TJMR

¹ Laws (SC) 2019 8 40