THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2942 OF 2005

JUDGMENT:

This appeal is filed by the appellant/claimant aggrieved by the Order and Decree dated 25.07.2005 passed in O.P.No.252 of 2002 by the Principal Motor Accidents Claims Tribunal at Nalgonda (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 18.09.2000, the petitioner along with her co-labourers started from Pulicherla Village in a lorry bearing No.AHH-3263 in order to go to Halia for the purpose of plucking of sweet oranges from a garden. At about 8.00 a.m. after crossing Peddavoora Village, the driver of the lorry drove it in a rash and negligent manner due to which the lorry turned turtle. In the said accident, the petitioner sustained injuries all over the body. Immediately, the petitioner was shifted to Osmania General Hospital, Hyderabad, for treatment, where his left arm was amputated. The petitioner filed above OP against respondent Nos.1 and 2, the owner and the insurer of the lorry, seeking compensation of Rs.1,50,000/-.

4. Before the Tribunal, respondent No.1 remained *ex parte.* Respondent No.2 filed its counter denying the averments of the claim petition and contended that the driver of the lorry was not

having valid and effective driving licence to drive the lorry as on the date of the accident; that he was not permitted by the owner of the lorry to drive the lorry; that the petitioner was traveling in goods lorry as an unauthorized passenger and that the amount claimed is excessive and prayed to dismiss the claim petition.

5. 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 lorry and awarded total compensation of Rs.1,50,000/-, with interest @ 9% per annum from the date of petition till the date of realization, fixing the liability against respondent No.1 alone and the claim against the 2nd respondent is dismissed. Dissatisfied with the quantum of compensation, the appellant/claimant filed the present appeal, seeking enhancement of the same.

6. Heard Sri T.Viswarupa Chary, learned counsel appearing for the appellant, and Sri Kota Subba Rao, learned standing counsel appearing for the 2nd respondent/insurance company. Perused the material on record.

7. Learned counsel for the appellant submits that there is no grievance with regard to the quantum of compensation, since the Tribunal has awarded total compensation of Rs.1,50,000/- as claimed by the claimant, but with regard to the fastening of the liability on the 1st respondent is concerned, the same needs to be re-considered by this Court in the light of the judgment rendered by the Apex Court in **United India Insurance Co. Ltd.**

v. K.M. Poonam and others[1], wherein it is held that the liability of insurance company is limited to highest six awards and the insurance company directed to pay amount of all the awards to the claimants and recover the amount in excess of its liability from the owner in execution without filing a separate suit. He sought to direct the 2nd respondent/insurance company to pay the compensation amount at the first instance to the appellant and recover the same from the 1st respondent/owner of the crime vehicle.

8. In **Poonam's case** (supra), the Apex Court held that even if a larger number of passengers than was permitted under the terms of the insurance policy were being carried in the vehicle, it could not be said that the insurance company would stand exonerated from its liability because the vehicle was insured for third party coverage for unlimited liability and that carrying a larger number of passengers than was permitted in terms of the insurance policy, did not amount to breach of the terms and conditions of the policy and the insurance company would still be liable since the vehicle was legally insured. The Apex Court further held that the total amount of compensation payable should be deposited by the insurance company which could be proportionately distributed to all the claimants, who could recover the balance of the compensation amounts awarded to them from the owner of the vehicle and that having regard to the beneficial object of the Motor Vehicles Act, 1988, it would be

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[1] 2011 ACJ 917

proper for the insurer to satisfy the award and to recover the amount from the owner, without taking recourse to a separate suit, from the executing court itself.

8. With regard to enhancement of compensation is concerned, having regard to the facts and circumstances of the case, this Court is of the opinion that the Tribunal granted just compensation, since the Tribunal has awarded compensation of Rs.1,50,000/- with interest @ 9% per annum from the date of petition till the date of realisation as against the claim of Rs.1,50,000/-. Therefore, I do not see any infirmity in the impugned order.

9. With regard to the fixing of liability is concerned, having regard to the submissions made by the learned counsel for the appellant and in view of the decision reported in **Poonam's case** (supra), this Court feels that it would be just and proper to direct the 2nd respondent/insurance company to pay the compensation amount at the first instance and recover the same from the 1st respondent/owner of the crime vehicle.

10. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by directing the 2nd respondent/insurance company to pay the compensation amount of Rs.1,50,000/- awarded by the Tribunal along with proportionate costs and interest @ 9% per annum from the date of petition till the date of realisation at the first instance and recover the same from the 1st respondent/owner of the crime

vehicle. On such deposit, the appellant is permitted to withdraw the entire amount. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 25th September, 2019

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