HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.2714 of 2005

JUDGMENT:

This Appeal is filed by the claimant against order and decree dated 05.10.1999 in OP No.339 of 1996 wherein and whereby the Chairman-Motor Accidents Tribunal-cum-Principal District Judge at Nalgonda, (for short 'the Tribunal') dismissed the claim of the injured/appellant on the ground that he himself is the owner of the vehicle which involved in the accident and that the same does not covered by the policy taken by the appellant.

2. For the sake of convenience, the parties hereinafter will be referred to as arrayed in the Original Petition. Brief facts which are necessary for disposal of this Appeal are as follows:

That on 03.07.1993, the petitioner was proceeding in a lorry bearing No.MKW 7711 with a load of soaps and mangoes to reach Delhi and when the said lorry reached near Chandupatla crossing on NH No.9 road, the driver of the said lorry drove it in a rash and negligent manner and dashed to a stationed lorry from its rear side. As a result of which, the petitioner who is the owner of goods and was sitting in the cabin, sustained multiple fractures over left leg, right hand, serious head injuries and crush injury on his left foot. Initially he was shifted to Government Hospital, Suryapet and later to NIMS, Hyderabad and that his left leg below knee was amputated. The accident had taken place due to rash and negligent driving on the part of the driver of the lorry in which the petitioner was travelling. The Police Chivvemula had registered a case in Cr.No.155/1993 against driver of the lorry. The petitioner is a businessman and due to the accident, he became permanently disabled. The respondent is the insurance company and the petitioner has insured his vehicle with the respondent, as such, the respondent is liable to pay the compensation.

3. The respondent filed counter denying the averments of the petition and contended that the petitioner should put strict proof of the manner in which the accident occurred; that the compensation claimed is excessive. Since the petitioner himself is insured and he was travelling in his own vehicle and that he himself filed the petition for compensation, the respondent insurance company is not entitled to pay any compensation for the reason that as per the terms of the policy, the insured was not covered. Apart from this petition, the petitioner also filed claim petition before the Consumer Forum, Nalgonda in C.D.No.70/1994 against insurance company, as such, petitioner cannot

maintain two claims and on this ground also, this petition is liable to be dismissed.

4. Based on the above pleadings, the following issues were framed by the Tribunal.

1. Whether the accident was due to the rash and negligent driving of the driver of the lorry MKW 7711?
2. Whether the petitioner is entitled to any compensation? If so, to what amount?
3. To what relief?

6. To prove the case of the petitioner, P.W.1 was examined and got marked Exs.A1 to A8. On behalf of the respondent, one Rani K.Many, who is branch manager of respondent-insurance Company was examined as R.W.1 and Ex.B1 got marked on its behalf.

7. The Tribunal, after considering both the oral and documentary evidence adduced on either side, dismissed the claim petition filed by the petitioner. Aggrieved by the same, petitioner filed the present appeal.

8. Basing on the evidence of P.W.1 and documentary evidence, the first issue was decided holding that the accident had taken place due to rash and negligent driving on the part of the driver of the lorry No.MKW 7711, in which the petitioner was travelling.

9. With regard to 2nd issue is concerned, the Tribunal considering the injuries sustained by the petitioner and treatment taken by him in hospitals and after pursing the

medical bills produced by him, found that the petitioner is entitled to compensation of Rs.60,000/-.

10. While fixing the liability on the insurance company, which is sole respondent, the Tribunal had relied on the following judgments:

a) **United India Insurance Company v. Odeti Mallu Bai[1],** wherein this Court held that even though there is a comprehensive policy, the insurance company is not liable to pay the compensation and the contention that the comprehensive policy covers the risk of owner-driver as the owner is permitted to drive the vehicle, is negatived.

b) In **Oriental Insurance Company Ltd., v. Chimajirao Kanhoji Rao Shirke[2]** , the Bombay High Court held that the term 'unlimited personal injury' mentioned in the policy on payment of extra premium is in fact for covering risk in excess of statutory liability in regard to third party risks and not the personal injury or death of the insured owner.

c) In **Oriental Fire & General Insurance Company Ltd., v. Shakuntala Devi[3],** the Division Bench of Allahabad High Court held that when there is a death of owner-insured who himself was driving the vehicle, when it met with an accident, the insurance company is not liable to pay compensation. The liability of insurer arises only when the

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[1] 1995 ACJ 851
[2] 1992 ACJ 452
[3] 1991 ACJ 177

insured incurs any liability by his death from his own insured vehicle, the insured has not incurred any liability to pay any damages or compensation to any person. The policy indicated that the insurance was in respect of damages to third party and not to the owner-insured of vehicle. Therefore, even though a comprehensive policy is in existence in respect of accident vehicle, the owner of vehicle, even a driver, when he sustained injuries or dies, will not get any compensation from the insurance company.

11. Even though learned counsel for the petitioner relied on the judgment reported in **New India Assurance Company Ltd.,Vijayawada v. Doredla Satyanarayana and others**[4] stating that when the driver of the lorry drove in a negligent manner and causing the lorry to go off the road and dashed against a tree and when the owner of the vehicle was travelling in the capacity of the owner of goods, the insurance company is held liable to pay the compensation to the claimants for the death of the owner, the said judgment was negatived in view of judgment of Hon'ble Supreme Court in **Smt.Mallawwa etc., v. Oriental Insurance Company Ltd.,**[5], wherein it is held that the insurance company is not liable when a person sustained injuries or dies while travelling on a goods vehicle when it met with an

[4] AIR 1997 AP 410
[5] 1999 (1) Law Summary SC 99

accident, even though he is the owner of the goods. In the instant case, though it is claimed by the petitioner that he is the owner of the goods, subsequently he was depicted as second owner in the lorry and claiming the compensation. In the light of principles laid down in the aforesaid judgments, the Tribunal came to the conclusion that when the insured himself is the person involved in the accident and sustained injuries or dies, the insurance company-respondent is not liable to pay compensation.

In view of the same, I do not see any reason to interfere with the Award passed by the Tribunal.

Accordingly, this Appeal is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Appeal, shall stand closed.

A.RAJASHEKER REDDY, J

14-03-2019
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