

THE HON'BLE SRI JUSTICE P. KESHA RAO

M.A.CMA.No.154 of 2012

JUDGMENT:

Heard the learned counsel for the appellant as well as respondents.

Questioning the liability of the appellant, in the orders passed in M.A.T.O.P.No.1384 of 2009 dated 29.6.2011 on the file of the Court of Motor Accidents Claims Tribunal (III Additional District Judge) (FTC), Khammam, the present appeal came to be filed.

Originally, the 1st respondent herein filed M.A.T.O.P.No.1384 of 2009 stating that on 3.3.2007 at 3.00 a.m. he started to go to Kodad along with his cousin, namely, Ramakrishna. The 1st respondent was carrying his cycle and other household articles and his masonry work implements with him. At about 4.30 am, the petitioner and his cousin boarded Tata Van bearing No.AP 16X 8294, coming from Bhadrachalam side, along with their goods. When they informed the driver of the said vehicle that they are going to Kodad, the driver informed that he was going to Vijayawada and they can travel upto Kodad. Accordingly, they paid Rs.50/- each and boarded the van with their goods. However, the said van met with an accident resulting the petitioner sustaining injuries i.e. fracture of lower end of right radius, fracture of left

elbow, fracture of upper tibia of left leg, fracture of fibula of right leg, major deep cut injury over right calf with loss of muscle piece, fracture of right pelvic bone, fracture of five ribs, fracture of right clavicle, major injury on the right cheek bone, major injury on right lower lip and multiple injuries. Therefore, the above said petition came to be filed claiming a compensation of Rs.2,00,000/-. The appellant herein filed written statement disputing that the 1st respondent herein is not entitled for any compensation since he was unauthorized passenger and was not carrying any goods with him. Therefore, there is violation of policy conditions and the 1st respondent herein is not entitled for any compensation.

The Tribunal below, after appreciation of the evidence and after hearing the rival contentions, was pleased to hold that the accident took place due to rash and negligent driving on the part of the crime vehicle and the 1st respondent herein is entitled for compensation by awarding a sum of Rs.1,29,220/- with interest at the rate of 7.5% per annum from the date of petition, by orders dated 29.6.2011.

Aggrieved by the said orders, the present appeal came to be filed.

Learned counsel appearing for the appellant, basically contended that the appeal is filed questioning the liability of the appellant. He contended that the 1st respondent along with his

cousin was standing in the bus stand on the relevant date along with luggage. Since the driver of the crime vehicle invited them to board the van, they have traveled in the said vehicle. Since the 1st respondent and his cousin were not carrying any goods, they are not covered under the policy and they are not entitled for any compensation.

Learned counsel appearing for the 1st respondent, contended that the 1st respondent along with his cousin, boarded the van with household articles, masonry work implements and bicycle. Therefore, the contention of the appellant that they were not carrying any goods is not correct.

The 1st respondent who examined himself as PW.1, in his chief examination has categorically stated that on 3.3.2007, they boarded the crime vehicle to go to Kodad along with their goods i.e. bicycle, household cooking utensils and masonry implements. Though the 1st respondent has specifically pleaded, in the cross examination the 1st respondent has not suggested anything to disprove the said contention particularly that the 1st respondent was not carrying any goods. When the case of the 1st respondent is not disputed by the appellant herein, it is not open for him to raise the contention that the claimants are not entitled for any compensation. It is relevant that in the written statement though the appellant has taken a specific plea that the 1st respondent was not holding any

luggage with him at the time of accident and he was traveling as an unauthorized passenger in a goods vehicle, he has not chose to dispute the case of the 1st respondent by suggesting anything.

Though the appellant has taken a specific plea that the 1st respondent was not carrying any goods, failed to establish the same. On the other hand, P.W.1 specifically pleaded and proved that he was carrying the goods as stated above. Further, the complainant in Ex.A.1, specifically mentioned that the driver of the crime vehicle drove the vehicle in rash and negligent manner resulting in the accident.

In these circumstances, this Court is of the opinion that there is no irregularity or illegality in the orders passed by the Tribunal below in awarding the compensation and as such there are no merits in the appeal.

Accordingly, the appeal is dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.KESHAVA RAO

Date: 23/01/2019

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THE HON'BLE SRI JUSTICE P. KESHA RAO

M.A.CMA.No.285 of 2012

Dated: 23.01.2019

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