THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.NO.38 OF 2012

JUDGMENT:

The present appeal is filed by the Insurance Company against the judgment dated 10.11.2011 in M.V.O.P.No.253 of 2006 on the file of the Principal Motor Accidents Claims Tribunal-cum-Principal District Judge, Warangal.

M.V.O.P.No.253 of 2006 was filed by the injured-claimant, Panjala Sunitha, under Section 166(1)(a) of the Motor Vehicles Act, 1988 read with Rule 455 of the A.P. Motor Vehicle Rules, 1989, claiming compensation of Rs.5,35,000/- on account of the injuries sustained by the injured-claimant in a motor vehicle accident that took place on 27.06.2005 at 11 am near Narayanapuram bus stop. The claimant is a gratuitous passenger who boarded the auto bearing No.AP-36-W-3628 to go to Bhupalpally. On the way, due to rash and negligent driving of the driver of the auto, it turned turtle, as a result of which the claimant sustained injuries. A case was registered in Crime No.93 of 2005 under Sections 337 and 338 of the Indian Penal Code. The injured-claimant was shifted to MGM Hospital, Warangal and was treated as in-patient and on account of the injuries to the left arm, the left upper limb of the injured was amputated making her permanently disabled. The claimant, who is a vegetable vendor and tapper, could not attend her normal duties and lost her monthly income of Rs.3,000/-. Hence, the O.P.

The Tribunal, after completing the pleadings, framed the following issues:-

1. Whether the accident that occurred on 27.06.2005 was due to rash and negligent driving of Auto Trolley bearing No.AP-36-W-3628 resulting in injuries to the petitioner?

2. Whether the petitioner is entitled to claim compensation? If so, to what amount and from whom?
3. To what relief?

The Tribunal has examined P.Ws.1 and 2 and got marked Exs.A1 to A8 on behalf of the claimant. On behalf of the defence, R.W.1 was examined and Exs.B1 to B3 were got marked. The first respondent failed to adduce evidence. While answering issue No.1, the Court below has categorically opined that the accident in question caused on account of the negligence of the driver of the auto belonging to the first respondent.

While answering issue No.II, the Court below has awarded a sum of Rs.4,08,996/- with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization. Aggrieved thereby, the present appeal is filed by the Insurance Company.

Mr. Kota Subba Rao, learned Standing Counsel for the Insurance Company, submits that the respondents have committed gross violation of the insurance policy since the goods vehicle-auto is not proposed to carry the claimant and accordingly, the insurance company is not liable to pay the compensation and prayed to allow the appeal and dismiss the claim.

Per contra, Mr. Ajay Kumar Madisetty, learned counsel appearing on behalf of the respondent-claimant, stated that the insurance company is liable to pay the compensation as the offending vehicle is covered by the insurance policy i.e. from 15.01.2005 to 14.01.2006 and the accident had taken place on 27.06.2005. Further, he relied upon the judgment of the Apex Court reported in

Shivaraj v. Rajendra & Anr.[1] wherein the Apex Court has categorically held that the argument of the insurance company that it is not liable for the loss or injury suffered by the claimant or to indemnify the owner of the tractor is unacceptable and held that the insurance company is liable to pay the compensation to the claimants since the vehicle is covered under insurance policy with liberty to recover the same from the owner of the offending vehicle.

Admittedly, it is seen from ExA3-charge sheet that there were more than two passengers travelling in the auto and it is not denied that except the present claimant there is no other claim made by the other passengers against the insurance company. Therefore, the case on hand is squarely covered by the settled principle of law laid down by the Apex Court in the decision cited *supra*.

The appeal is, accordingly, dismissed upholding the judgment of the Tribunal. It is open to the appellant-insurance company to pay and recover. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(T.AMARNATH GOUD, J)

5th July 2019
RRB

[1] **2018 AIR (SC) 4252 = 2018 Law Suit (SC) 853**