

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.612 of 2010

JUDGMENT:

This appeal is filed by the appellant-insurer aggrieved by the Order and Decree dated 30-12-2008 passed in MVOP.No.604 of 2006 by the Motor Vehicle Accidents Claims Tribunal-cum-III Additional District Judge (FTC), Medak (for short, the Tribunal).

2. The brief facts of the case are that on 23-04-2006 at about 2.30 pm, the 1st respondent/claimant boarded the cabin of stationed Tanker bearing Regn.No.AP 25 U 6615, near RRC Venture and at the same time, one another Tanker bearing Regn. No.AP 01/V-225, coming from Hyderabad to Nizamabad, dashed the stationed tanker in a rash and negligent manner and due to which the 1st respondent-claimant sustained injuries to all over the body viz., both legs were fractured and knee joint was crushed, left hand was fractured and sustained loss of two fingers. Immediately he was shifted to Gandhi Hospital, Secunderabad, for treatment. The 1st respondent filed aforesaid MVOP against the appellant-insurer and 2nd respondent-owner of the crime vehicle, claiming compensation of Rs.1,50,000/- for the injuries sustained by him.

3. In the claim petition, the appellant/insurer filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. Before the Tribunal, the 1st respondent/claimant himself examined as P.W.1 and got examined P.W.2 and marked Exs.A.1 to A.6 on his behalf. The appellant-insurer got examined R.W.1 and marked Ex.B-1.

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 crime vehicle and held that the 1st respondent-claimant is entitled to compensation and finally awarded compensation of Rs.90,000/- (Rupees Ninety Thousand only) under various heads with interest @ 7.5% per annum by fixing the liability of compensation against the appellant-insurer and the 2nd respondent-owner of the crime vehicle jointly and severally.

6. Dissatisfied with the quantum of compensation, the appellant/insurer filed the present appeal, seeking for dismissal of the claim petition.

7. Heard the learned Standing Counsel for the appellant-insurer and the learned counsel for the 1st respondent-claimant.

8. Learned Standing Counsel for the appellant-insurer contends that the Tribunal erred in directing the appellant-insurer to pay the compensation and recover the same from the 2nd respondent as it is contrary to settled principle of law since in the absence of the receipt of the premium, the appellant-insurer is not liable to pay the compensation to the injured. Moreover the 1st respondent-claimant was an unauthorized person as the accident took place while he intends to travel on the goods carrying vehicle

which is not meant for carrying passengers. Therefore, the Tribunal ought to have dismissed the claim petition in-toto. In support of his contention, he relied upon a decision of the Supreme Court in **Shivaraj Vs. Rajendra and another**¹.

9. The short point involved in this appeal is that whether the 1st respondent-claimant is entitled to compensation though he boarded goods carrying vehicle as a gratuitous passenger. Admittedly, the 1st respondent-claimant boarded the cabin of stationed Tanker which is meant for carrying goods only and not for carrying passengers. Therefore, since he intends to travel in the said tanker, which was insured for only carrying goods, in breach of policy terms and conditions, he can be considered as an unauthorized passenger and therefore he cannot claim any compensation from the appellant-insurer as there is no liability on the part of the appellant-insurer.

10. Accordingly, the appeal is allowed setting aside the judgment and decree dated 30-12-2008 in MVOP No.604 of 2006 on the file of MACT-cum-III Additional District Judge (FTC) at Medak. No costs.

11. All the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 20.06.2019
kvr

¹ (2018) 10 S.C.C. 432