THE HON'BLE JUSTICE G. SRI DEVI

M.A.C.M.A.No.2056 of 2014

JUDGMENT:

This appeal is preferred by the appellant-claimant, questioning the order and decree, dated 14.08.2013 passed in M.A.T.O.P.No.326 of 2006 on the file of the Motor Accidents Claims Tribunal-I Additional District Judge, Khammam (for short, the Tribunal).

2. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

3. Brief facts of the case are that the claimant filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.5,00,000/- for the injuries sustained by him in a motor vehicle accident that occurred on 26.12.2005. It is stated that on that day the claimant boarded auto bearing No.AP 20 W 2612 at Nayakangudem in order to go to Khammam and when the said auto reached near Devuni Thanda, the driver of the said auto drove it in a rash and negligent manner at high speed and to avoid an accident against the lorry which was coming in opposite direction, he came to the edge of the road,

thereby the auto turned turtle and the claimant and other inmates of the auto sustained injuries. The 1st respondent is the owner and the 2nd respondent is the insurer of the aforesaid auto, are jointly and severally liable to pay the compensation.

4. Before the Tribunal, though the 1st respondent appeared through his Counsel but no counter has been filed. The 2nd respondent filed counter denying the averments made in the claim-petition including the manner in which the accident took place, nature of injuries suffered and nature of treatment taken by the claimant. It is also contended that the auto was overloaded with passengers as such the 2nd respondent is not liable to pay the compensation and also stated that the amount claimed is excessive and prayed to dismiss the claim petition.

5. Basing on the above pleadings, the following issues are framed before the Tribunal:-

1) Whether the accident took place on account of rash and negligent driving by the driver of auto bearing No.AP 20 W 2612?
2) Whether the driver of auto was holding proper driving licence?

3) Whether R-1 committed breach of any policy conditions?
4) Whether the petitioner is entitled to any compensation, if so, to what extent and against whom?
5) To what relief?

6. During trial, on behalf of the claimant, P.Ws.1 and 2 were examined and Exs.A1 to A9 and Exs.C1 and C2 were marked. On behalf of the respondents, R.W.1 was examined and Ex.B1 was marked.

7. 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 driver of the Auto and awarded total compensation of Rs.2,42,038/- together with interest @ 7.5% per annum payable the 1st respondent only while dismissing the claim against the Insurance Company as there is breach of policy conditions. Challenging the said finding, the claimant filed the present appeal.

8. Learned Counsel for the claimant would submit that the Tribunal erred in exonerating the Insurance Company from its liability.

9. Learned Standing Counsel for the Insurance Company is that the Tribunal has rightly exonerated the insurance company as there is a breach of policy conditions and the same warrants no interference.

10. Admittedly as per the charge sheet five persons including the driver were traveling in the auto at the time of accident. The seating capacity of the offending vehicle was four in all. It is well settled law that even if, passenger vehicle is overloaded, the Insurance Company is not totally absolved of its liability to indemnify the owner. *In United India Insurance Co. Ltd. v. K.M. Poonam and others*[1], and *National Insurance Co. Ltd. v. Tulna Devi and others*[2], though the vehicle was carrying passengers in excess of the number of passengers permitted, which was beyond the terms of the contract, the Supreme Court

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[1] 2011 ACJ 917
[2] 2009 ACJ 581

had applied the principle of pay and recover. Therefore, in the light of the judgments of the Apex Court referred to above, the Insurance Company is directed to pay the compensation amount at the first instance and then recover the same from the owner of the vehicle.

11. Accordingly, the M.A.C.M.A. is allowed and following the doctrine '*pay and recover*', the 2^{nd} respondent-Insurance Company is directed to pay the compensation amount awarded by the Tribunal together with accrued interest thereon to the appellant-claimant, at the first instance and thereafter recover the same from the owner of the offending vehicle i.e., the 1^{st} respondent without initiating any separate proceedings. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

28.06.2022
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