APHC010073592023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3333]
(Special Original Jurisdiction)

THURSDAY, THE 29th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 47/2023

Between:

1. MYLA GANGADHARA RAO, S/O. SUBBA RAO, NOW AGED ABOUT 22 YEARS, VENKATA KRISHNA PURAM, PEDAKAKANI MANDAL, GUNTUR DISTRICT. (THE APPELLANT WAS DECLARED AS MAJOR ON I.A.NO. 432/2022 BY ORDER DATED 29-4-2022 BEFORE THE TRIBUNAL BELOW PENDING TRIAL)

...APPELLANT

AND

1. MS VASIREDDY VENKATADRI INSTITUTE OF TECHNOLOGY, A UNIT OF SOCIAL EDUCATIONAL TRUST, REP. BY VIDYA SAGAR, NAMBURU PEDAKAKANI MANDAL, GUNTUR DISTRICT (OWNER OF THE BUS AP 07 TC 5334)

2. NATIONAL INSURANCE CO LTD, REP. BY ITS DIVISIONAL MANAGER, OPP. TO ARUNDELPET POLICE STATION, MAIN ROAD, 9TH LINE ARUNDELPET, GUNTUR,

3. Y PRATHAPA REDDY, S/O. VENKATA SUBBA REDDY AGED ABOUT 54 YEARSM CHAPALAVARI STREET, BATNAM BAZAAR,GUNTUR CITY, GUNTUR DISTRICT (JCJC GUNTUR) (DRIVER OF THE BUS AP 07 TC 5334) THE 3RD RESPONDENT IS NOT IS NECESSARY PARTY AS NO CLAIM IS MADE AGAINST HIM

IN THE APPEAL)

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Courtpleased to set aside the Judgment and decree passed in M.V.O.P. No.1153 of 2017 on the file the Chairman, Motor Accidents Claims Tribunal-cum-III Addl. District Judge, Guntur dated 7-12-2022 and enhance the amount of compensation as entitled by the appellant together with interest at the rate of 12percent per annum from the date of filing the Original Petition till the date of realization and pass

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to permit her to amend the amount of compensation claimed from Rs. 6,00,000/- to Rs.10,00,000/- in the Original Petition in MVOP No. 1153 of 2017 on the file the court of the Chairman, Motor Accidents Claims Tribunal-cum-III Addl. District Judge, Guntur and to pass

Counsel for the Appellant:

1. SIVA PRASAD KATAKAMSETTY

Counsel for the Respondent(S):

1. D V SAINATH
2. RAMA MOHAN RAO KOTHA

The Court made the following:

JUDGMENT:-

This appeal is filed by the appellant/claim petitioner/injured aggrieved by the award dated 07.12.2022 passed by the Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge, Guntur in M.V.O.P.No.1153 of 2017, whereby, the Tribunal awarded compensation of Rs.4,50,000/- as against the claim of Rs.6,00,000/-.

2. For the sake of convenience, the parties are referred to as they are arrayed before the Tribunal.

3. The petitioner is the injured and is a resident of Venkatakrishnapuram, Pedakakani mandal, Guntur district. The 1st respondent is the owner, 2nd respondent is the insurer and the 3rd respondent is the driver of the bus bearing No.AP-07-TC-5334. On 27.04.2017, at about 07.30 a.m., while the petitioner along with others was travelling on a tractor-trailer bearing No.AP-07-TH-2704 to attend agricultural coolie works, near VVIT College, Pedakakani mandal, the bus bearing No.AP-07-TC-5334, being driven by the 3rd respondent in a rash and negligent manner, hit the tractor-trailer from behind; due to which, the persons travelling on the tractor-trailer sustained grievous injuries and one amongst them succumbed to injuries. The petitioner suffered crush injury to left foot including fracture of metacarpal bones and fracture distal left radius. The accident was report to Police who registered a case in Crime No.137/2017 on the file of Pedakakani police station against the 3rd respondent for the offence punishable under Sections 304-A and 338 of the Indian Penal Code. After the accident, the petitioner was shifted to Government general hospital, Guntur and thereafter, for further treatment, he was shifted to Amar Orthopedic hospital, Gunturivari Thota, Guntur

city, where he was treated as in-patient from 29.04.2017 to 22.05.2017; the petitioner underwent two major surgeries to his left hand and left foot; the petitioner claimed that due to the injuries sustained by him in the accident, he is unable to move in usual course. The petitioner, aged about 17 years, claimed to be a student and that he was earning Rs.4000/- per month by doing agricultural work. Seeking compensation of Rs.6,00,000/- for the injuries sustained by him in the accident occurred due to the rash and negligent driving of the 3rd respondent, the petitioner filed claim petition under Section 166 of the Motor Vehicle Act and Rules 455 and 476 of the Andhra Pradesh Motor Vehicle Rules.

4. The respondent Nos.1 and 3 remained exparte. However, the 2nd respondent – insurance company contested the claim petition by filing its written statement by contending that the accident was caused due to the negligence of the driver of the tractor-trailer and that he was not having valid driving license to drive the same. The subject bus belonging to the 1st respondent is not insured with the 2nd respondent at the time of accident and that the 3rd respondent also was not having a valid driving license. The petitioner is a Class 10 student and is not an earning member of his family and that he is attending his day-to-day activities in usual course. Hence, requested to dismiss the claim petition.

5. Basing on the above pleadings, the Tribunal framed the following issues for trial:

1) Whether the petitioner Myla Gangadhara Rao, received injuries in the road accident occurred on 29-4-2017 near VVIT College, Pedakakani Mandal, due to rash and negligent driving of the driver of the bus bearing No.Ap 07 TC 5334?

2) Whether the petitioner is entitled to compensation, if so, to what amount, and against whom?

3) To what relief?

6. During the course of trial, the petitioner got examined P.Ws.1 to 3, got marked Exs.A1 to A9 along with Exs.X1 and X2. No ocular or documentary evidence was adduced by the respondents.

7. The Tribunal, after considering all the facts and material available before it, awarded Rs.4,50,000/- to the petitioner by holding that respondent Nos.1 to 3 are jointly and severally liable to pay. Seeking enhancement of the compensation awarded by the Tribunal, the claim petitioner filed the present appeal by contending that the Tribunal ought to have awarded compensation under the head of functional disability basing on the evidence of P.W.2 – orthopedic surgeon that the petitioner's foot was badly crushed leading to permanent disability of 25% to 30%; that the Tribunal ought to have granted compensation under the head of loss of earnings with future prospects of 40%.

8. Heard Sri. Katakamsetty Siva Prasad, learned counsel for the appellant and Sri. K. Rama Mohan Rao, learned Standing Counsel for the 2nd respondent – insurance company.

9. Perused the entire material available on record. In order to prove that the accident occurred due to the rash and negligent driving of the 3rd respondent, the petitioner himself got examined as P.W.3 and his father was examined as P.W.1. The petitioner reiterated the entire manner of the accident and got marked Ex.A1 – certified copy of the FIR in Crime No.137/2017 filed against the 3rd respondent and Ex.A2 – copy of the charge sheet filed by the Police against the 3rd respondent after

due investigation. The 2nd respondent has not adduced any ocular or documentary evidence denying negligence on the part of the 3rd respondent. In the absence of any rebutting evidence on the part of the 2nd respondent, the Tribunal, basing upon the evidence of the petitioner (P.W.3) coupled with Exs.A1 and A2, came to a conclusion that the petitioner sustained injuries in an accident that occurred due to the rash and negligent driving of the 3rd respondent and answered issued No.1 in favour of the petitioner, which in the considered opinion of this Court is just and reasonable, as the said finding is on substantial basis; as such, the same need not be interfered with by this Court.

10. In support of his case, the petitioner got examined the doctor as P.W.2. During the course of his examination, P.W.2 stated about the injuries sustained by the petitioner and the treatment undergone by him from 29.04.2017 to 22.05.2017 as in-patient and that the petitioner suffered disability between 25% to 30% to his left foot; P.W.2 further deposed that the 3rd respondent bore all the medical expenses of the petitioner and the same was admitted by the petitioner. However, as the petitioner claimed that he spent Rs.25,000/- towards medical expenses besides the amount given by the 1st and 3rd respondents, the Tribunal, considering the facts and circumstances of the case awarded Rs.25,000/- towards follow up treatment. Furthermore, considering the nature of the injury and treatment undergone by the petitioner, the Tribunal awarded Rs.25,000/- for extra nourishment and attendant charges. In addition, the Tribunal awarded Rs.1,00,000/- to the petitioner towards pain and suffering and loss of amenities in life. As mentioned earlier, P.W.2 deposed that the permanent disability of the petitioner can be assessed between 25% - 30%. Relying upon a decision of this Court in ***Master***

Mallikarjun Vs. Divisional Manager, The National Insurance Company Limited & another, wherein it was held that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant etc., should be Rs.3,00,000/- if the disability is between 10% - 30%; Rs.4,00,000/- upto 60%; Rs.5,00,000/- upto 90%, the Tribunal awarded Rs.3,00,000/- to the petitioner under the head of permanent disability. In total, the Tribunal awarded Rs.4,50,000/- [Rs.25,000/- + Rs.25,000/- + Rs.1,00,000/- + Rs.3,00,000/-] to the petitioner. As the 1st respondent is the owner of the bus driven by the 3rd respondent and the 2nd respondent is the insurer of the bus, the Tribunal directed respondent Nos.1 to 3 to jointly and severally liable to pay compensation to the petitioner. The amount of compensation computed by the Tribunal is just and proper in the considered opinion of this Court, however the point that arises for consideration is whether the Tribunal has rightly made the 2nd respondent – insurance company liable to pay compensation.

11. Admittedly, there is no evidence on record to show that the petitioner was engaged as a coolie by the owner of the tractor-trailer. Special premium was not collected to cover the risk of coolie. Further, the seating capacity of the tractor is only ‘one’ and as the petitioner was travelling as an unauthorized passenger, the insurance company is not liable to pay compensation.

12. At this juncture, it is pertinent to quote Rule 252 of the Andhra Pradesh Motor Vehicles Rules, 1989, in this case, which reads as follows:

> **“252. Carrying of persons in goods vehicle carriage:-**

> (1) No person shall be carried in the cab of a goods vehicle beyond the number for which there is seating accommodation at the rate of 284 nukuneters measure along the seat, excluding the space reserved for the driver for each person and not more than Seven persons in all shall be carried in any goods vehicle.
>
> (2) No persons shall be carried in a goods vehicle upon the goods or otherwise in such a manner that such person is in danger of falling from the vehicle and in no case shall any person be carried in a goods vehicles, in such a manner that any part of his person when he is in sitting position is at a height exceeding 3 meters from the surface which the vehicle rests.
>
> (3) No person other than a person connected to the conveyance of goods shall travel in a goods vehicle.
>
> (4) Notwithstanding the provision of sub-rule (1) the Regional Transport Authority or the State Transport Authority, may subject to such conditions as it thinks fit allow a large number of persons to be carried in a goods vehicles;
>
> (5) Nothing in this rule shall be deemed to authorize the carriage of any person for hire or reward on any goods vehicle, unless there is in force in respect of the vehicle a permit authorizing the use of the vehicle for such purpose, and save in accordance with the provisions of such permit."

13. According to the above Rule, persons shall not be carried more than the prescribed capacity and it is not just violation of terms of policy, but, if a person is allowed to travel in a goods vehicle beyond the permitted seating capacity, the insurance company is not at all liable and

therefore, it cannot be fastened with liability of paying the compensation to the claimants and recovering the same from the owner as was held by this High Court in case of **Vachala Vs. V.R. Kumar**[1]**,** wherein the decision at paragraphs No.4 and 5 reads as follows:

> "4. Ex. B.2, true extract of the 'B' register relating to the offending vehicle, shows that it originally was a open (hackney) carriage (Auto Rickshaw Cab) having seating capacity of 'Four in all and by the proceedings in R. No. 7713/A5/93 dated 20.4.1993, the following alterations were made with effect from 20.4.1993.
>
> '(1) Class of Vehicle - L.M.V. goods vehicle;
>
> (2) Seating Capacity - one;
>
> (3) D.L.W : 330 Kgs; and (4) R.L.W. - F.A.W.-300 Kgs and R.A.W-600 Kgs.'
>
> Therefore, it is clear that the seating capacity of the offending vehicle is only one i.e., the driver alone can travel in the vehicle. The offending vehicle being a light motor goods vehicle with seating capacity for one i.e., driver, question of anybody else either it be the owner of the goods, or his authorized representative, being allowed to travel therein cannot arise in view of Rule 252(5) A.P. Motor Vehicles Rules, 1989, made in pursuance of the power given under the Act. When carrying of passengers in the offending vehicle is not allowed by the Act, question of insurer covering the risk of owner of the goods or an authorized representative of the owner of the goods travelling along with the goods in the offending vehicle does not arise.

[1] 2004 (5) ALD 30

> 5. The next contention of the learned counsel for the appellant that carrying of passenger in the offending vehicle at best amounts to the driver committing a breach of the terms and conditions of the policy and, so, the insurer has to pay the compensation to the appellants and recover the amount so paid from the owner, cannot be accepted because carrying of passengers in the offending vehicle is contrary to the provisions of the Act and the Rules made thereunder and since the policy issued by second respondent does not even cover the risk of passenger in the offending vehicle. If the insurer covers the risk of some persons and lays down some conditions for its being made liable in respect of those persons, and if the insured violates some of those conditions, then there may be some force in the contention of the learned counsel for the appellants. When the insurer did not undertake to cover the risk of passengers in the offending vehicle, question of its being made liable in respect of the risk of such passenger does not arise."

14. Learned standing counsel for the 2nd respondent – Insurance Company has brought to the notice of this Court that in a similar case-MACMA No.1794 of 2006, where the driver of the tractor drove the same in a rash and negligent manner and due to sudden jerk, the deceased therein, who was sitting on the tractor fell down and the trailer ran over him resulting in grievous injuries and later, succumbed to the injuries at the Government Hospital, this Court directed the claimants to recover the compensation amount awarded by the Tribunal from the owner of the tractor, and requested this Court to pass similar order in this case also.

15. The operative portion of the order passed in MACMA No.1794 of 2006 is as follows:

> "However, since the appellant deposited half of the amount of compensation awarded by the Tribunal and the claimants were permitted to withdraw the same, without furnishing any security, the appellant since not liable to pay any compensation as decided in the above case, it can recover the amount from the insured without filing any separate suit, but by filing proceedings in execution. The respondents/claimants are still entitled to recover the balance half of the compensation amount awarded by the Tribunal from the owner of the tractor."

16. In the present case also, the petitioner travelled in the tractor-trailer as an unauthorized passenger and the seating capacity of a tractor-trailer is only one. Further, the 1st respondent has not paid any additional premium to the 2nd respondent to cover the risk of a coolie. Thus, in such circumstances, keeping in view the order passed by the Court mentioned hereinabove, the petitioner may recover the amount of compensation awarded by the Tribunal from the owner of the tractor and trailer i.e., the 1st respondent, irrespective of the liability against the 2nd respondent. Permitting the passenger to travel in a goods vehicle is a violation of terms of policy, therefore, the insurance company is not liable to pay compensation to the claimant.

17. As a similar issue has already been decided by this Court vide order dated 17.07.2025 in M.A.C.M.A.No.1794 of 2006, the present appeal can also be decided on the same terms. Thus, if the 2nd respondent has already paid compensation to the petitioner, the 2nd respondent is at liberty to recover the same from the 1st respondent by

filing appropriate proceedings, else, the petitioner shall approach the 1st respondent and recover the amount of compensation awarded by the Tribunal, vide the impugned judgment and decree dated 07.12.2022.

18. In the result, this Motor Accident Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE V. SUJATHA

Date:29.10.2026.

Gss