APHC010502252015

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

[3365]

TUESDAY ,THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 144/2015

Between:

Gajulapalli Vasundhara, Kadapa Dist. **...APPELLANT**

AND

P Sreenivasulu Kadapa Dist Ano and Others **...RESPONDENT(S)**

Counsel for the Appellant:

1. K RATHANGA PANI REDDY

Counsel for the Respondent(S):

1. RAMACHANDRAREDDY GADI
2. P B NARASIMHA MURTY
3. .

The Court made the following:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

M.A.C.M.A.No.144 of 2015

JUDGMENT:

This Appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the injured claimant assailing the award dated 19.11.2013 of the learned Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Kadapa (hereinafter referred to as 'the Claims Tribunal') in M.V.O.P.No.794 of 2009.

2. Heard arguments of Sri K.Rathanga Pani Reddy, the learned counsel for the appellant/claimant and Sri P.B.Narasimha Murthy, the learned counsel for respondent No.2-Insurance Company. In spite of service of notice, respondent No.1 did not choose to appear and contest.

3. The following facts are required to be noticed:

On 23.08.2008 at about 8:00 P.M. near Porumamilla Town, Badvel main road, the tractor and trailer bearing registration No. AP-04-V-1150 and 1149 was driven by its driver rashly or negligently and it dashed an opposite coming auto rickshaw.

Smt. Gajulapalli Vasundhara was travelling in the auto rickshaw and because of the collision between the two vehicles she suffered fractures and other injuries all over her body. Crime No.67 of 2008 was registered at Porumamilla Police Station as against the driver of the offending tractor and trailer. The injured was treated at Government Hospital, Badvel and then at RIMS hospital, Kadapa and then at SVIMS hospital, Tirupati. The injured was 22 years old attending agricultural works and earning Rs.5,000/- per month. The injuries caused 30% physical disability to her. Stating that she is entitled for compensation of Rs.4,35,000/- but restricting her claim only to Rs.3,00,000/- she filed M.V.O.P.No.794 of 2009 showing the owner of the offending tractor and trailer as respondent No.1 and the insurance company as respondent No.2. Before the Claims Tribunal the owner of the offending vehicle did not choose to appear and contest. The insurance company denied the narration mentioned in the petition and contended that the driver, owner and insurer of the auto rickshaw are also necessary parties and their non-joinder is fatal and it prayed for dismissal of the claim.

4. The learned Claims Tribunal settled the following issues for trial:

1. Whether petitioner received injuries in a motor vehicle accident occurred due to rash and negligent driving by the driver of tractor and trailer bearing No.AP-04-V-1150 and 1149 on 23.08.2008?

2. Whether the petitioner is entitled for compensation, if so, to what amount and from whom?

3. To what relief?

5. The evidence of PWs.1 and 2 and Exs.A.1 to A.6 and the evidence of RWs.1 and 2 and Ex.B.1 and Exs.X.1 to X.4 were available for consideration before the Claims Tribunal.

6. After an elaborate discussion of evidence, the learned Claims Tribunal held that the accident and resultant injuries were out of rash or negligent driving of offending tractor and trailer by its driver. Referring to the investigative record/Ex.A.3-charge sheet and the evidence of RWs.1 and 2 and Exs.X.1 to X.4, the learned Claims Tribunal stated that at the material point of time the driver of the offending tractor and trailer had no driving licence. It stated that the driver was liable to pay compensation

and the owner of the offending vehicle was vicariously liable to pay compensation. Since the vehicle was entrusted to the driver who had no valid and effective driving licence, it amounted to breach of insurance policy conditions and therefore it absolved the insurance company of any liability. It assessed the compensation under various heads and granted compensation as mentioned below.

Medical expenses	Rs. 32,000-00
Transport expenses	Rs. 11,000-00
Pain and suffering	Rs. 20,000-00
Attendant charges	Rs. 10,000-00
Loss of earning power due to disability	Rs.2,00,000-00
Total (Rupees two lakhs seventy three thousands only)	Rs.2,73,000-00

It passed the award in the following terms:

> "In the result, petition is allowed in part, awarding compensation of Rs.2,73,000/-(Rupees two lakhs seventy three thousands only) with proportionate costs and interest at 6% P.A. from the date of petition till date of realization

> recoverable by petitioner from respondent No.1 only. Rest of the petitioner's claim is dismissed without costs. Time for deposit one month. The second respondent is not liable to pay any compensation to the petitioner and the petition against the second respondent is dismissed without cost. The petitioner is permitted to withdraw 50% of her awarded compensation with accrued interest and costs and the remaining 50% of her shall be kept in fixed deposit in her name in any nationalized for a period of 2(two) years. Advocate fee is fixed at Rs.1500/-(Rupees one thousand and five hundred only)."

7. In the present appeal two contentions are raised on behalf of the claimant/appellant. That the Claims Tribunal committed an error in not fastening liability on the insurance company and at least it could have applied the doctrine of 'pay and recover'. That higher rate of interest ought to have been awarded and therefore it requires correction.

8. As against it, the learned counsel for respondent No.2-Insurance Company contended that in the light of the fact that there was no driving licence to the driver of the offending vehicle, the award of the Claims Tribunal is in accordance with law and does not call for any interference.

9. Therefore, the contentions raised are to be addressed now. From the evidence the findings recorded by the Claims Tribunal are that at the material point of time the tractor and trailer bearing registration No.AP-04-V-1150 and 1149 was owned by Sri P.Srinivasulu/respondent No.1 and it was validly insured under Ex.B.1 and by the time of accident the insurance policy was in force. The factual finding of the Claims Tribunal is that the driver of the offending vehicle did not have valid and effective driving licence at the material point of time. Nothing contrary to it is argued by the learned counsel for appellant on these aspects.

10. On the issue of liability to pay the compensation by the insurer, if there was fundamental breach of insurance policy, the insurance company could be absolved of the liability. However, in those cases where the third party claimant suffered serious injuries and acquired permanent disability such as the one available in the case at hand, the consistent view taken by the

Constitutional Courts is to apply the principle of pay and recover[1]. In such view of the principles of law it is difficult to approve the impugned award to the extent that it absolved the insurance company totally. In the given facts and circumstances of this case this Court records that respondent No.2-Insurance Company need not shoulder the liability and indemnify the owner of the offending vehicle. However, this is a fit case to apply the principle of pay and recover. Therefore, the compensation awarded by the Claims Tribunal has to be first paid by the insurance company and thereafter the insurance company is entitled to file execution petition against the owner of the offending vehicle/respondent No.1 for recovering the same.

11. Section 171 of the Motor Vehicles Act, 1988 reads as below:

> "**171. Award of interest where any claim is allowed.**— Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in

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[1] **Shamanna v. The Divisional Manager, The Oriental Insurance Co. Ltd. (2018) 9 SCC 650** and **Parminder Singh v. New India Assurance Company Limited (2019) 7 SCC 217**

> addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."

12. Courts have been consistently holding that the interest that is paid by nationalized banks would be interest that could be ordered to be paid. In the case at hand, the claimant requested for 16% interest. The Claims Tribunal awarded 6% interest. Learned counsel for the appellant/claimant failed to show that at the material point of time the nationalized banks were granting more interest than 6%. In such circumstances the rate of interest as granted by the Claims Tribunal cannot be called as incorrect. No other points were argued for consideration.

13. In the result, this Appeal is partly allowed. Consequently, the award dated 19.11.2013 of the learned Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Kadapa in M.V.O.P.No.794 of 2009 fixing liability on the first respondent holds good. The award is modified directing the second respondent-Insurance Company to pay the compensation amount of Rs.2,73,000/- with 6% interest per annum from the date of petition till the date of realisation within one month from

the date of this judgment. The second respondent-Insurance Company shall pay the amount to the appellant/claimant in the first instance and later recover the same from the first respondent by filing an execution petition without there being any need for filing any suit. On such a deposit, the claimant is entitled to withdraw the same along with costs and accrued interest thereon. There shall be no order as to costs in this appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 25.03.2025
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THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

M.A.C.M.A.No.144 of 2015

Date: 25.03.2025

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