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APHC010596932017

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3604]
(Special Original Jurisdiction)

MONDAY, THE 2ND DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 665/2017

Between:

1. SAHIK NASAR VALI, S/O.MHUKTHUM VALI @ MUGDUM VALI R/O.3RD LINE, KVP COLONY, GUNTUR. GUNTUR D.M.C.

...APPELLANT

AND

1. PATHAKANURU PRATHAP CHOWDARY 3 ORS, S/O.VENKATA RAMANAPPA R/O.H.NO.4-113/A, KANAKADRIPALLI VILLAGE, KOLIMIGUNDLA, KURNOOL DISTRICT. KURNOOL D.M.C.
2. SRI RAM GENERAL INSURANCE CO LTD, REP BY ITS DIVISIONAL MANAGER O/O.10003-E-8, RIICO INDUSTRIAL AREA, SITAPUR, JAIPUR, RAJASTHAN-302 022.
3. P CHINNA SRINIVASA REDDY, R/O.D.NO.1/92 B, MAIN ROAD, K.L.ROAD, TRIPURANTAKAM, PRAKASAM DISTRICT. ADDANKI D.M.C.
4. THE ORINETAL INSURANCE CO LTD, REP BY ITS DIVISIONAL MANAGER O/O.SANTHAPET, ONGOLE. ONGOEL D.M.C. (R3 AND R4 NOT NECESSARY)

...RESPONDENT(S):

Appeal filed under Order 41 of CPC before the High Court MACMA aggrieved by the order and decree dated 13.06.2016 passed in MVOP

No.1195/2012 by the Motor Accidents Claims Tribunal cum III Addl.District Judge, Guntur

IA NO: 1 OF 2017(MACMAMP 1470 OF 2017

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 condone the delay of 141 days in preferring the present MACMA against by the order and decree dated 13.06.2016 passed in MVOP No.1195/2012 by the Motor Accidents Claims Tribunal cum III Addl.District Judge, Guntur

Counsel for the Appellant:

1. MARELLA RADHA

Counsel for the Respondent(S):

1. N RAMA KRISHNA

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The Court made the following:

THE HON'BLE SMT. JUSTICE SUNITHA GANDHAM

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 665 OF 2017

JUDGMENT:

Assailing the judgment and decree dated 13.06.2016 in M.V.O.P.No.1195 of 2012 passed by the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Guntur, petitioner preferred the instant appeal seeking enhancement of compensation.

2. The parties are being referred to as 'petitioner' and 'respondents' as arrayed in the petition before the Tribunal, for the sake of convenience and clarity.

3. Case of the petitioner is thus:

On 14.12.2011 at about 8.00 P.M, while the petitioner was getting down from the stationed lorry of respondent No.3 at Cheekateegalapalem X-road, Vinukonda, the driver of lorry bearing No.AP 21 TT 9789 drove the same in a rash and negligent manner and dashed against another lorry bearing No.AP 27 Y 5389 and as a result of which, petitioner sustained severe multiple injuries. Immediately after the accident, he was shifted to Government hospital, Vinukonda and thereafter, he took treatment in Life Hospital, Guntur. A case in crime No.267 of 2011 is registered of the offence under Section 338 of Indian Penal Code (hereinafter referred to as 'the Code') against the driver of the lorry bearing No.AP 21 TT 9789 as the accident occurred due to the rash and negligent driving of driver of lorry bearing No.AP 21 TT 9789 and as such, respondent Nos.1 and 2 are liable to pay compensation.

4. Having received notice, respondent No.1 remained *ex parte.* Respondent No.2 filed counter refuting the averments made in the petition, wherein, *inter alia* contended that there was no negligence on the part of the driver of respondent No.1, driver of the stationed lorry was at fault, respondent

No.1 had no valid driving license as on the date of accident and respondent No.2 is not liable to pay compensation, and with other formal denials, prayed to dismiss the petition.

5. Respondent Nos.3 and 4 filed counter refuting the averments made in the petition, wherein, *inter alia* contended that the accident occurred due to the negligence of driver of respondent No.1, petitioner has not sustained permanent disability, there is no loss of earning capacity, and with other formal denials, prayed to dismiss the petition.

6. Taking into consideration of the aforementioned pleadings, the learned Tribunal settled the following issues:

> 1) Whether the accident occurred due to rash and negligent driving of the vehicle i.e. lorry bearing No.AP 27 Y 5389?
>
> 2) Whether the petitioner is entitled to compensation, and if so, to what amount and against whom?
>
> 3) To what relief?

7. During trial, petitioner himself examined as PW.1 and he has got examined independent witnesses as PWs 2 and 3, and filed EXs.A1 to A5 and X1 to X3 documents. As against the said evidence, respondents have got examined independent witnesses as RW Nos.1 to 3, and filed EXs.B1 and B2 documents. At the culmination of trial, learned Tribunal allowed the petition in part granting compensation of Rs.70,813/- with interest at 9% per annum and dismissed the claim against respondent Nos.2 to 4. Feeling aggrieved by the said judgment and decree dated 13.06.2016, petitioner preferred the instant appeal urging the following grounds:

(i) The judgment and decree of the learned Tribunal is illegal, arbitrary, unjust and contrary to law.

(ii) The learned Tribunal has not properly considered the oral and documentary evidence to decide the issues.

(iii) The learned Tribunal failed to consider the income of the petitioner at Rs.3,200/- per month with beta Rs.100/-.

(iv) The learned Tribunal ought to have granted an amount of Rs.70,000/- towards permanent disability and loss of earnings.

(v) The learned Tribunal ought to have granted an amount of Rs.30,000/- towards loss of conveyance, extra nourishment and attendant charges.

(vi) The learned Tribunal ought to have granted an amount of Rs.30,000/- towards pain and suffering.

(vii) The learned Tribunal ought to have granted interest @ 12% per annum, and with other formal grounds, prayed to allow the appeal.

8. Heard both sides.

9. On hearing both sides and upon perusing the material available on record, the points that would arise for consideration are:

1. Whether the petitioner sustained injuries in the accident dated 14.12.2011 occurred out of use of lorry bearing No.AP 21 TT 9789?
2. Whether the petitioner is entitled for compensation? If so, to what amount?
3. Whether the judgment and decree dated 13.06.2016 passed by the learned Tribunal are sustainable in facts and law?
4. To what relief?

10. Admittedly, respondents have not preferred any appeal challenging the findings of the learned Tribunal, however, being the first appellate court and final fact finding court, this court has to re-examine and re-appreciate the entire oral as well as documentary evidence on record.

11. Point No.1:

(a) To prove the contentions, petitioner examined himself as PW.1, filed examination in chief affidavit in lieu of his chief examination reiterating the averments made in the petition. PW.1 testified that on 14.12.2011, at about 08:00 P.M, while he was getting down from the stationed lorry bearing No.AP 27 Y 5389 of respondent No.1 near Cheekateegalapalem X-road, driver of the lorry bearing No.AP 21 TT 9789 drove the same in a rash and negligent manner and dashed against another stationed lorry and as a result, he sustained multiple injuries and since the accident occurred due to the rash and negligent driving of the driver of lorry bearing No.AP 21 TT 9789, a case in crime No.267 of 2011 is registered of the offence under Section 304-A of the Code, against the driver. Nothing useful material is elicited in the cross examination of PW.1.

(b) Further, as seen from EX.A1/First information report, a case in crime No.267 of 2011 is registered of the offence stated *supra* against the driver of offending vehicle and after completion of investigation, police found fault with the driver of the offending vehicle and laid charge sheet *vide* Ex.A2 alleging that the accident occurred due to his rash and negligent driving. So, Exs.A1 and A2 supports the evidence of PW.1 and no rebuttal evidence is adduced by the respondents on this aspect. Added to it, having received notice, respondent No.1 remained ex parte and both the respondents failed to examine driver of the offending vehicle who is the best person to speak about the accident and his non examination is fatal to the case of the respondent Nos.1 and 2. So, in the absence of any rebuttal evidence, the evidence of PW No.1, which is buttressed by Exs.A1 & A2, clinchingly proves that the accident occurred due to the rash and negligent driving of lorry bearing No.AP 21 TT 9789 by its driver.

(c) Be that as it may, this petition is filed under Section 163-A of Motor Vehicle Act and it reads as follows:

> 163-A. Payment of compensation in case of death or grievous hurt, etc. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.
>
> (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.
>
> (3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.

d) So, as per Section 163-A of the Act, especially Sub-section (2), the claimants are not required to plead or establish that death or grievous hurt in respect of which the claim has been made was due to any wrongful act or negligence or default of the owner of the vehicle or of the vehicle concerned or of any other person, however, the accident must arose out of the use of motor vehicle.

e) In ***M.G.DIR, Bangolore Metropolitan Transport Corporation Vs. Sarojamma & Anr***[1] & ***National Insurance company ltd., vs. Sinitha and others***[2]***,*** Coordinate bench of erstwhile High Court of Andhra Pradesh and Hon'ble Apex Court held that in a claim under Section 163-A of the Act, the claimants need not prove that the death of deceased has resulted due to rash and negligence of the owner of vehicle, but they have to prove and establish, death of deceased arose out of use of motor vehicle and further held that the owner or insurer of a motor vehicle, in such a claim may plead and prove, that the accident occurred due to the negligence of the victim and can defeat a claim under Section 163-A of the Act on proof of negligence of the victim.

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[1] 2008 (4) ALD Page1
[2] AIR 2012 SC 7977

f) The said proposition applies to the present case at hand also and respondent No.2 having argued that accident occurred due to the rash and negligent driving of petitioner, they have not adduced either oral or documentary evidence and not shown single probability to disbelieve the version of petitioner and respondents not even disputed the accident. Hence, this issue is answered holding that the petitioner sustained injuries in the accident dated 14.12.2011 occurred at about 08.00 P.M. at Cheekateegalapalem X-Road out of use of lorry bearing No.AP 21 TT 9789.

12. Point No.2:

(a) As per the version of the petitioner, he was hale and healthy, was aged about 28 years, was working as lorry driver, was earning Rs.3,200/- per month and on 14.12.2011, he sustained multiple grievous injuries, immediately after commission of accident, he was shifted to the Government hospital, Vinukonda and from there shifted to life hospital, Guntur and there, he took treatment for more than ten days, suffered loss of income and disability, and filed Exs.A3/Wound certificate, A4/Medical bills and A5 & A6/Cash receipts.

(b) As per Section 163A of the Act, the owner of the motor vehicle or the authorized insurer shall be liable to pay a sum of Rs.5,00,000/- in case of death and a sum of Rs.2,50,000/- in case of grievous hurt. To prove his injuries and treatment, petitioner has got examined Dr. A. Jaganmohan Reddy as PW.2 and Dr. P. Nagarjuna Rao as PW.3. PW.2 testified that petitioner sustained deformity of right hip joint and fracture of nostril bone and on 20.12.2011, he was discharged from their hospital. It came in the evidence of PW.3 that the petitioner sustained fracture injury to nasal bone, he gave treatment and there are no permanent scratches on the face of the petitioner showing disfiguration and further, as per the orthopedic manual, no disability is prescribed for facial disfigurement. As per the evidence of PW Nos.2 & 3, injuries sustained by the petitioner are healed, he is in a position to do all his routine activities and he has not sustained any disability.

(c) So, as per the evidence of PWs 1 to 3 coupled with Exs.A3 to A6 and EX.X1, petitioner sustained two grievous injuries, took treatment for more than 10 days, admitted in Life hospital, Guntur, incurred Rs.45,813/- towards treatment. Respondents not even denied the injuries of the petitioner and as per Section 164 of the Act, petitioner is entitled to compensation amount of Rs.2,50,000/- for the grievous injury sustained by him. Respondent No.2 who is insurer of the lorry bearing No.AP 21 TT 9789 is vicariously liable for the acts committed by the respondent No.1.

(d) So far as the contention of the respondent No.2/insurance company that the driver of the offending vehicle had no driving license, as on the date of accident, respondent No.2 has got examined authorized person of road transport office as RW.3. Having produced EX.X2/Authorization letter and X3/Endorsement of Deputy Transport Commissioner, RW.3 testified that the driver of the lorry i.e. Kompally Srinivasulu had no driving license to drive the said lorry, as on the date of accident.

(e) In this regard, in ***National Insurance Co. Ltd., Vs. Swaran Singh and others***[3], in which Hon'ble Apex Court has clearly explained the circumstances about the liability of insurance company and has held that, in case, where driver of vehicle admittedly did not hold license and the same was allowed consciously to be driven by owner of the vehicle, the insurer is entitled to exoneration from its liability and it further held that,

> "the breach of policy conditions, i.e., disqualification of driver or invalid driving licence of the driver, as contained in sub section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer, and mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties, and to avoid its liability towards inured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of

[3] 2004 ACJ 1

> fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."

(f) And, in ***United India Insurance Company Ltd., through its Divisional Manager Vs. Sujata Arora and others***[4], Hon'ble Supreme Court while considering the principles laid down in ***National Insurance Company Limited Vs. Laxmi Narain Dhut***[5] and ***Jawahar Singh Vs. Bala Jain and other***[6] has held that, if the offending vehicle is driven by the driver who had no driving license or fake license, it amounts to violation of terms and conditions of policy and in that circumstances, no liability can be fastened on the insurance company. In ***Oriental Insurance Company Limited, Rajahmundry Vs. Bhimala Pavan Kumar and others***[7], Hon'ble High Court of Andhra Pradesh has held that, in the absence of driving license, the insurance company cannot be made liable, to pay compensation.

(g) Respondent No.2 has adduced evidence and proved that respondent No.1 who is owner of the offending vehicle had committed willful breach by entrusting the lorry to his driver who had no driving license at all, as on the date of accident. Added to it, respondent No.1 had not adduced evidence to show that he has not violated the terms and conditions of Ex.B2/Policy. So, respondent No.2 adduced rebuttal evidence to show that respondent No.1 violated the terms and conditions of EX.B2/Policy and as such, respondent No.2 is not liable to indemnify respondent No.1. Hence, this point is answered holding that respondent No.1/Owner of the offending vehicle alone is liable to pay compensation.

13. **Point No.3:**

Upon reappraisal of the evidence on record, and for the foregoing reasons, this court came to the conclusion that the learned Tribunal erred in

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[4] 2013 (3) T.A.C. 29 (S.C)
[5] (2007 (4) Scale 36)
[6] (2011 (5) Scale 494)
[7] 2007 (3) ALD 138 16

assessing just and fair compensation, however, rightly dismissed the claim against the respondent Nos.2 to 4 and as such, the same is liable to be set aside in part. Hence, this point is answered accordingly.

14. Point No.4:

(i) **In the result**, this Motor Accident Civil Miscellaneous Appeal is allowed, and the compensation awarded by the Tribunal is enhanced from **Rs.70,813/- (Rupees Seventy Thousand Eight Hundred and Thirteen only) to Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand Only)** together with interest at the same rate as awarded by the Tribunal, from the date of the claim petition till the date of realization, recoverable from the respondent No.1.

(ii) Time for deposit, as aforesaid, with interest, excluding the amount, if any, already deposited, is one (1) month from the date of receipt of a copy of this judgment.

(iii) On such deposit, the petitioner is permitted to withdraw the compensation as awarded supra along with accrued interest thereon, excluding the amount, already paid.

(iv) Claim against respondent Nos.2 to 4 is dismissed.

(v) There shall be no order as to costs.

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

SUNITHA GANDHAM, J

Dt:02.11.2026
Vns

Whether the order is :

Speaking Yes/No ✓ / Reasoned Yes/No

Reportable Yes/No ✓ / Non-Reportable Yes/No