

APHC010130532023



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

[3333]

MONDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 220/2023

Between:

1. ORIENTAL INSURANCE COMPANY LTD, REP. BY ITS LOCAL
MANAGER BRANCH OFFICE, OPP. DISTRICT COURT KADAPA

...APPELLANT

AND

1. BANDARU VENKATA MANDADI VENKATAIAH, S/O. KARRI MANDADI,
AGED 55 YEARS NOW RESIDING AT D.NO. 2/1191, SRIHARI RAO
STREET NAGARAJUPET, KADAPA CITY PREVIOUSLY RESIDING AT
D. NO. 2-28, MAMBEDU VILLAGE CHITTOOR MANDAL AND DISTRICT
2. GEVINI DHANALAKSHMI, W/O. CHANDRA MOULI OWNER OF THE
LORRY RESIDING AT D. NO. 13-384, RAJEEV NAGAR COLONY,
JEEVAKONA SATYANARAYANAPURAM POST TIRUPATHI TOWN,
CHITTOOR DISTRICT
3. NERJALA RAMA MOORTY, N/O. CHENGAI AH, DRIVER OF THE
LORRY NOW RESIDING AT D. NO. 9-10 NETHAKUPPAM VILLAGE,
RAMACHANDRAPURAM, POST AND MANDAL CHITTOOR N/O.
CHENGAI AH, DRIVER OF THE LORRY NOW RESIDING AT D. NO. 9-
10 NETHAKUPPAM VILLAGE, RAMACHANDRAPURAM, POST AND
MANDAL CHITTOOR

...RESPONDENT(S):

Counsel for the Appellant:

1.N RAMA KRISHNA

Counsel for the Respondent(S):

1.D KODANDARAMI REDDY

The Court made the following:

THE HONOURABLE SMT JUSTICE V.SUJATHA
MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 220/2023

JUDGMENT:

1. This Motor Accident Claims Miscellaneous Appeal (for short MACMA) has been preferred by the Appellant/ 3rd respondent i.e., The Oriental Insurance Company Limited represented by its Local Manager Branch Office, opposite to District Court, Kadapa, being aggrieved by the Order/Award and Decree passed by the Chairman, Motor Accident Claims Tribunal (for short MACT) –cum- VI Additional District Judge, Kadapa, in M.V.O.P.No.406 of 2018 dated 31.10.2022 awarding an amount of Rs7,38,901/- as against the claim of Rs.10,50,000/-.

For the sake of convenience and to avoid confusion, the parties herein after are referred to as they were arrayed before the Tribunal i.e., Appellant herein as Respondent No.3, Respondent No.1 herein as petitioner-claimant; and Respondents No2 and 3 herein as Respondents No.1 and 2.

2. The Petitioner being injured filed claim petition in M.V.O.P.No.406 of 2018 under Section 166 of Motor Vehicle Act, r/w. Rule 455 of Andhra Pradesh Motor Vehicle Rules, claiming compensation of Rs.10,50,000/- from respondents 1 to 3 jointly and severally for the injuries sustained by him in a motor vehicle accident, together with interest and for costs of the petition.

3. Brief averments of the claim petition in MVOP No.406 of 2018 are that: the petitioner was doing cow dung and sheep dung business and getting income of Rs.15,000/- per month and the same was contributing to their family and he is the only earning member and the entire family depending upon the income of the injured.

i. On 17.03.2018 at about 12.30 p.m., the petitioner and his wife B.Venkatamma, sister-in-law Jayamma, brother-in-law Chandra Mouli started in a lorry bearing No. AP02 T 3159 from Tirupathi after loading dung (Eruvu) in order to sell the same at Railway Kodur. Said lorry was driven by one N.Ramamurthy. When the said lorry reached near Chimpiri Siddaramireddy Banana Gardens at S.Upparapalli H.Wada, Railway Kodur Mandal, the driver of the lorry drove it rashly, in a negligent manner and with high speed, as a result of which, the right side front tyre of the lorry burst and the lorry piercly, took a turn towards right side. At the same time, one lorry bearing No.TN52 H 6675 was coming from Kodur side and despite its driver took the lorry towards left side in order to avert the direct hitting, but, in that process, the lorry bearing No.TN52 H 6675 hit on the right side of the lorry bearing No.AP02 T 3159, as a result of which, the petitioner and other inmates of the lorry sustained bleeding injuries. The passers-by called 108 Ambulance and shifted the injured to SVRR Hospital, Tirupathi.

ii. Basing on the report given by Chandra Mouli, a case in Cr.No.130 of 2018 was registered in Railway Kodur Police Station for the offence punishable under Sections 337, 338, 279 of IPC against the driver of lorry bearing No.AP02 T 3159.

iii. Petitioner sustained severe injuries to his right leg, spanning fixation of right lower limb and above knee POP slab immobilization for left lower limb, that the condition of the petitioner is tenderness and swelling over left distal femur and knee joint and he took treatment as an inpatient for 10 days and inserted plates and rods and incurred medical expenses of Rs.2,50,000/- and he was discharged on 27.03.2018. He is still suffering due to accidental fracture injuries. He is not able to do work as previously and he became permanently disable man and lost his bread and butter forever and leading very miserable life. Apart from that, the petitioner advised to have future surgeries to set right the dis-figuration by incurring huge amount.

iv. 1st respondent is the owner of the crime vehicle - lorry bearing No.AP02 T 3159, which was insured with 2nd respondent and the policy was in force as on the date of accident. 3rd respondent is the driver of the crime vehicle. Hence, all the respondents 1 to 3 are jointly and severally liable to pay the compensation to the petitioner.

4. Respondents No.1 and 3 filed their written statement, denied the averments of the petition and contended that the 1st respondent is the owner of the lorry bearing No.AP02 T 3159 and the subject matter accident was occurred not due to the negligence on the part of the lorry driver and there is no fault on the part of 3rd respondent. 1st respondent handed over his vehicle to her driver i.e. 3rd respondent who was having valid and effective driving licence to drive the said vehicle at the time of accident. 1st respondent has validly insured her vehicle with 2nd respondent's insurance company and the policy was in force as on the date of accident and that the respondents No.1 and 3 have not violated any terms and conditions of the policy and as per the terms and conditions of the policy, the insurer i.e. 2nd respondent is alone liable to pay any damages and hence, these respondents have no liability. Hence, prayed to dismiss the petition against Respondents No.1 and 3.

5. 2nd respondent/insurance company filed written statement, denied the averments of the petition and contended that the petitioner must prove his age, income and manner in which the accident occurred and his expenditure towards medical treatment. The accident occurred due to tyre burst, not due to negligence of the driver of the lorry bearing No.AP02 T 3159 and hence, this respondent is not liable to indemnify the insured i.e., 1st respondent. As on the date of accident, the petitioner has travelled in the alleged lorry as an unauthorized passenger along with other three unauthorized persons, hence, this

respondent is not liable to pay compensation to the petitioner and not liable to indemnify the 1st respondent. This respondent is not liable to pay compensation unless and until it is proved that whether the driver of the alleged lorry bearing No.AP02 T 3152 possessed valid driving licence. The amount claimed by the petitioner is excessive and exorbitant. Hence, prayed to dismiss the petition, with costs.

6. Basing on the above pleadings, the tribunal framed the following issues for trial:-

- 1) Whether the accident took place as alleged by the petitioner on 17.03.2018 at about 2.00 p.m., near S.Upparapalli, H.Wada, Chimpiri Siddaramireddy Banana Garden on Tirupathi- Kodur main road, when the lorry bearing No.AP02 T 3159 belonging to respondent No.1 driven by its driver / 3rd respondent in rash and negligent manner, as a result the right side front tyre of the lorry busted and the lorry piercly, took a turn towards right side, at the same time one lorry bearing No.TN52 H 6675 was coming from Kodur side and its driver despite took the lorry towards left side in order to avert the direct hitting, but in that process, the lorry bearing No.TN52 H 6675 hit upon right side of the lorry bearing No.AP02 T 3159, resulting injuries to the petitioner, who was proceedings in the lorry bearing No.AP02 T 3159 or whether there was any contributing negligence on the part of the driver of the lorry bearing No.TN52 H 6675?
- 2) Whether the petitioner suffered injuries and disability as alleged?

- 3) Whether there was any insurance coverage for lorry bearing No.AP02T 3159 and if so, does the policy cover the risk of petitioner and if so, was there any breach of policy conditions as alleged by the respondent No.2?
- 4) Whether the petitioner is entitled to any compensation, if so, to what extent and against whom? and
- 5) To what relief?

7. During the course of enquiry, the petitioner himself examined as P.W.1 and got marked Exs.A.1 to A.9 documents, besides examining P.Ws.2 to 4 on his behalf through Advocate commissioner.

On behalf of the respondents, the insurance company got examined its Administrative Officer as RW.1 and got marked Ex.B.1.

8. Upon hearing both counsel for petitioner and respondents, upon perusing oral and documentary evidence placed on record by both parties, the Tribunal partly allowed the claim petition, with costs, by awarding Rs.7,38,901/- as compensation, together with interest at 7.5% per annum from the date of filing of the petition, till the date of deposit, directing respondents No.1 to 3 jointly and severally to deposit the compensation amount within two (02) months from the date of award/order.

9. Being aggrieved by the said Order/Award, the Insurance Company has preferred the present appeal on the ground that the Tribunal failed to consider the aspect that the crime vehicle is a good carrying vehicle and is meant for carrying goods only and is having seating capacity of only three (03) persons in all i.e., driver, cleaner and other person may include the owner of the goods or his agent, but in the present case, even as per the case of the claimants that on 17.03.2018 at about 12.30P.M., the petitioner and his wife – B.Venkatamma, sister-in-law – Jayamma, brother-in-law – Chandra Mouli started in a lorry bearing No.AP02 T 3159 from Tirupati after loading dung (eruvu) in order to sell the same at Railway Kodur and the lorry was driven by one N.Ramamurthy and when the lorry reached near Chimpiri Siddaramireddy Banana Gardens at S.Upparapalli H.Wada, Railway Kodur Mandal, the driver drove the lorry in a rash and negligent manner, as a result of which, the right side front tyre of the lorry burst and the lorry piercly, took a turn towards its right side, at the same time, another lorry bearing Registration No.TN52 H 6675 coming from Kodur side, its driver took the lorry to its left in order to avoid the direct hitting, but, in the said process, the lorry bearing No.TN52 H 6675 hit on right side of lorry bearing No.AP02 T 3159, as a result of which, the petitioner and other inmates o the lorry sustained bleeding injuries. As there is violation of terms and conditions of the insurance policy, the insurance company is not liable to pay compensation amount to the petitioners.

10. As rightly pointed out by the Counsel for the appellant, the seating capacity of the lorry is only three in number i.e., driver, cleaner and other person which includes the owner of the goods or his agent and other than those, none shall be allowed to travel in the lorry. In the present case, apart from the driver, cleaner, the petitioner along with his family i.e., his wife, sister-in-law and brother-in-law were travelling in the said lorry which is beyond the seating capacity, it was apparently deemed that they are gratuitous passengers and which in fact, is in violation of the policy conditions.

11. Under similar circumstances, the Hon'ble Supreme Court in "***National Insurance Co. Ltd. v. Swaran Singh & Ors.***¹" has categorically held that the insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount it can recover the entire amount paid to the third party on behalf of the assured. Therefore, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner.

In "***National Insurance Co. Ltd. v. Swaran Singh & Ors.***," (referred above) the Hon'ble Supreme Court while dealing with the case of unauthorized passengers held as follows:

¹(2004) 3 SCC 297

“Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with Sub-section (1) thereof. The right to avoid liability in terms of Sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading.”

As per the law laid down by the Hon'ble Supreme Court in the judgment (referred supra) even if the insurer successfully proves a breach of policy condition, the insurance company may still be directed to pay compensation to the claimant and then recover the amount from the insured (owner of the vehicle). This ensures that the rights of the third-party victim are protected and it was emphasized that insurance policies are statutorily required to protect third parties, and even in cases of breach by the insured, the insurer's liability towards third-party victims does not vanish immediately.

12. In the case on hand, the evidence adduced by the claimants before the Tribunal would substantially prove that the accident occurred due to tyre burst as the driver – Respondent No.3 drove the lorry the rash and negligent manner and turned to its right, at the same time, one lorry bearing No.TN52 H 6675 coming from Kodur side took the lorry to its left to avert direct hitting, but in that process, hit upon the right side of lorry bearing No.AP02 T 3159, resulting the petitioner and other inmates of the lorry sustained injuries. In view of the same and in the light of the decision of the Hon'ble Supreme Court referred to supra, the contention of respondent No.2 – insurance company that liability cannot be fastened on the insurance company is unsustainable and cannot be accepted.

13. To prove that the petitioner sustained severe injuries and took treatment, through Advocate Commissioner he examined P.W.2 – Dr. A.Narendra, Orthopedic Surgeon in Narendra Ortho Trama Centre, Tirupati, who deposed that on 17.03.2018 petitioner admitted in their hospital with injuries i.e., fracture right tibia, fracture of left femur condylar and he got operated on 17.03.2018 for his right leg, the above injuries are grievous in nature, Ex.A.4 is discharge summary, Ex.A.7 is medical bills were issued by him in their hospital, P.W.2 further deposed that though the fractures united very well, petitioner has difficulties i.e., petitioner is unable to sit cross leg, squatting, climbing stairs and to do heavy manual labour.

14. Through Advocate Commissioner, the petitioner also examined P.W.3 – Dr. D.B.Sasidhar Reddy, orthopedic –cum Managing Director in Sri Ramadevi Multi Specialty Hospital. P.W.3 deposed that the petitioner was brought to their hospital on 29.03.2018 and diagnosed condylar fracture left femur, underwent surgery on 02.04.2018, post operative period is uneventful, discharged on 07.04.2018 and advised bed rest for three (03) months, medical management for four months and regular checkups, said treatment was given to the petitioner under Arogya Sri Scheme on free of cost, wound healed well at the time of discharge and patient did not turn up for follow-up treatment.

15. Through Advocate Commissioner, petitioner also examined P.W.4 – Dr. B.Ramachandraiah, M.S. Ortho who issued Ex.A.6 – permanent disability certificate basing on the clinical examination of petitioner. P.W.4 deposed that left knee stiffness and ugly appearance and noted that unable to walk properly, sit properly, for which he had permanent disability about 75%. P.W.4 in his cross examination admitted that he never gave treatment to the petitioner, he only gave Ex.A.6 – disability certificate on his personal and private capacity.

16. Coming to the quantum of compensation, as the petitioner sustained two grievous injuries as mentioned above, tribunal awarded (30,000 x 2 =) Rs.60,000/-, for one simple injury awarded Rs.10,000/-, for pain and suffering awarded Rs.30,000/-. As the accident occurred near S.Upparapalli, H.Wada,

Chimpiri Siddarami Reddy Banana garden on Tirupati – Kodur main road and the petitioner took treatment initially at SVRRGG Hospital, Tirupati, then at Narendra Ortho Trauma Centre, Tirupati and then Sri Rama Devi Hospital, Tirupati, for which he might have incurred some amount towards transportation charges. Therefore, the tribunal awarded Rs.10,000/- towards transportation charges from Kodur to Tirupati. As per Ex.A.4 the petitioner was treated at Narendra Ortho Trauma Centre, Tirupati as in-patient from 17.03.2018 to 27.03.2018 and underwent surgery to his right leg on 17.03.2018 and again admitted in Sri Ramadevi Multi Specialty Hospital, Tirupati as inpatient from 29.03.2018, on 02.04.2018 underwent surgery and discharged on 07.04.2018 and he was advised bed rest for three (03) months, during that period, the petitioner needed one attendant in hospitals for assisting him. Hence, the tribunal awarded Rs.12,000/- to the petitioner towards attendant charges. As the petitioner sustained grievous injuries and advised bed rest for three months, an amount of Rs.25,000/- awarded by the tribunal towards nourishment of food and an amount of Rs.63,901/- awarded towards medical bills under Ex.A.7.

17. As per the claim of the petitioner and evidence as P.W.1 he stated that he is doing cow dung and sheep dung business and earning Rs.8,000/- per month. In Ex.A.1 – F.I.R also it is clearly mentioned. Respondents not adduced any evidence to disprove that petitioner was getting less than Rs.8,000/- per month by adducing oral or documentary evidence. Hence, the tribunal

considered the income of the deceased as Rs.8,000/- per month. As per Ex.A.6 – disability certificate issued by P.W.4, he assessed the disability of petitioner at 75% for right leg. Therefore, the tribunal considered the disability of petitioner at 50% as Ex.A.6 was issued under the private capacity by P.W.4. As per Ex.A.2 – would certificate petitioner was aged 55 years on the date of accident. The appropriate multiplier ‘11’ is applicable for the age group of 51 - 55 years, as per the decision of the Hon'ble Apex Court in **"Sarla Verma Vs. Delhi Transport Corporation"**². If it is calculated, the loss of earnings due to permanent disability would come to $(8,000 \times 12 = 96,000 \times 50/100 = 48,000 \times 11 =)$ Rs.5,28,000/-. In all, the Tribunal awarded Rs.7,38,901/- as compensation to the petitioner for the injuries and permanent disability sustained by him in a motor vehicle accident.

18. In view of the above discussion, while confirming the quantum of compensation awarded by the Tribunal, this Court deems it appropriate to modify the award passed by the Tribunal only to the extent of directing respondent No.2 – insurance company to initially pay the compensation to the appellants – claimants and then recover the amount from the owner of the vehicle.

19. Accordingly, the appeal is allowed directing respondent No.2 – Insurance company to initially pay the compensation amount of Rs.7,38,901/-

²2009 ACJ 1298

along with interest at the rate of 7.5% p.a, from the date of petition till realisation to the claimants, within a period of two (02) months from the date of receipt of copy of the order and then recover the same from the insured-owner of the offending vehicle (respondent No.1) by filing Execution proceedings before the Tribunal. If any compensation amount deposited by the appellant, the remaining amount shall be deposited. No costs.

Pending miscellaneous application(s), if any, shall stand disposed of.

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Dated 06.04.2026.

SMT JUSTICE V.SUJATHA

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THE HONOURABLE SMT JUSTICE V.SUJATHA

MOTOR ACCIDENTS CIVIL MISCELLANEOUS APPEAL NO: 220/2023

DATED 06.04.2026

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