

(2023) 01 TEL CK 0041

In the Telangana High Court

Case No : Motor Accident Civil Miscellaneous Appeal No. 629 Of 2012

United India Insurance Company Limited, Karimnagar.

APPELLANT

Vs

Sandarsh Swathi And Another

RESPONDENT

Date of Decision : 30-01-2023

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2023) 01 TEL CK 0041

Hon'ble Judges : Dr. Chillakur Sumalatha, J;M.G. Priyadarsini, J

Bench : Division Bench

Advocate : V Sambasiva Rao, Palle Sriharinath

Final Decision : Partly Allowed

Judgement

1. Assailing the judgment and decree, dated 28.07.2011 made in O.P.No.209 of 2008 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-the VI Additional District Judge, Siddipet (for short "the Tribunal"), the United India Insurance Company Limited, preferred this appeal.

2. For the sake of convenience, the parties will be hereinafter 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, 1988 claiming compensation of Rs.30,00,000/- for the injuries sustained by her in a motor vehicle accident that occurred on 30.07.2008. It is the case of the claimant that on 30.07.2008, while she was proceeding in Tata Sumo bearing No.AP 15 AF 3084 and when the said vehicle reached near Komaravelli Temple, the driver of the said Tata Sumo drove it in a rash and negligent manner, as a result, the vehicle was turned turtle and the claimant sustained multiple fractures injuries to her spinal apart from severe head injury. Immediately after the accident, the claimant was shifted to Area Hospital, Siddipet and from there she was referred to Gandhi Hospital, Secunderabad for better treatment. The claimant joined in Apollo Hospital and

thereafter she was referred to KIMS Hospital, where she took treatment as inpatient and she was operated on 04.07.2008 and discharged on 16.07.2008. On a complaint, the Police, Cheriya, registered a case in Crime No.99 of 2008 against the driver of the Tata Sumo Vehicle. Since the accident occurred due to rash and negligent driving of the driver of the Tata Sumo, the claimant laid the claim against the respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle.

4. Before the Tribunal, respondent No.1 filed counter admitting the involvement of the offending vehicle in the accident. It is further stated that the driver of the vehicle was having valid driving licence at the time of the accident and the offending vehicle was validly insured with respondent No.2, as such, respondent No.2 alone is liable to pay the compensation. It is specifically contended that the offending vehicle was not on hire to carry any passengers at the time of the accident and the claimant, who is a family friend, had taken the vehicle to attend an interview at Infosys.

5. The appellant, respondent No.2, filed counter contending that vehicle was insured with respondent No.2 as private car and that the act policy covers the risk only in respect of third parties but not in respect of passengers traveling in the vehicles either gratuitous or fare paying passenger, therefore, the insurance company is not liable to pay the compensation. It is further contended that there is a breach of policy conditions as such respondent No.2 is not liable to pay any compensation.

6. Considering the claim-petition, counters filed by the respondents and also the oral and documentary evidence brought on record, allowed the O.P. in part awarding a sum of Rs.20,00,000/- towards compensation with interest at 8% per annum payable by respondent Nos.1 and 2 jointly and severally. Challenging the same, the appellant-Insurance Company filed the present appeal.

7. Heard both sides and perused the record.

8. Learned Standing Counsel appearing for the appellant has contended that the Tribunal erred in awarding interest at 8% and as per the principles enunciated by the Apex Court, the Tribunal ought to have restricted the rate of interest to 6% only. It is further contended that though the contents of the charge sheet clearly shows that the claimant, along with others, has engaged the crime vehicle, the Tribunal erred in holding that the claimant was a third party. It is further submitted that the Tribunal erred in fixing the liability on the appellant contrary to the law laid down by this Court in Branch Manager, United India Insurance Company Limited v. Kondakotla Saroja (2008) 5 ALT 246 (DB).

It is also submitted that the Tribunal failed to see that the owner did not chose to come into the witness box to depose on the liability aspect. As regards the quantum of compensation, it is contended that the Tribunal erred in fixing the income of the injured at Rs.8,000/- per month and also awarding Rs.2,00,000/- for the treatment and medicines and Rs.1,20,000/- for physiotherapy. It is

further contended that the vehicle was insured under private car category and liability is act only policy and the insurance company did not receive any premium to cover the risk of the inmates of the crime vehicle and since the owner gave the vehicle on hire purpose contrary to the policy conditions, the appellant is not liable to pay the compensation and therefore, prayed to allow the appeal by setting aside the order under appeal.

9. On the other hand, the learned counsel appearing on behalf of the claimant-respondent, has contended that the compensation amount granted by the learned Tribunal, considering the age, avocation, nature of injuries sustained by the claimant and nature of treatment undergone by her, is reasonable and needs no interference by this Court. Insofar as the liability of the appellant to pay the compensation is concerned, it is contended that the vehicle was insured with respondent No.2, the policy was in force, and that the owner as well as any other person can use the vehicle with the consent of the owner. In the present case also, the claimant, who is a family friend of the owner, has used the vehicle and therefore, the Tribunal has rightly fixed the liability on the insurance company. In support of his contentions, he relied upon the judgment of the Apex Court in *Uttar Pradesh State Road Transport Corporation v. Kulsum and others* (2011) 8 SCC 142.

10. A perusal of the impugned judgment discloses that the Tribunal having framed Issue No.1 as to whether the accident occurred due to rash and negligent driving of the driver of TATA Sumo bearing No.AP 15 AF 3084 (old corresponding NO.GJ 01 AP 8139) by its driver and having considered the evidence of P.W.1 coupled with the documentary evidence i.e., Ex.A1, F.I.R., Ex.A2, Medical Certificate and Ex.A3, charge sheet, has categorically observed that the accident occurred due to the rash and negligent driving of the driver of the Tata Sumo bearing No.AP 15 AF 3084 and has answered the issue in favour of the claimant and against the respondents. Therefore, we see no reason to interfere with the finding of the Tribunal in holding that the accident occurred due to the rash and negligent driving of the driver of the Tata Sumo.

11. Insofar as the quantum of compensation is concerned, the Tribunal passed a well reasoned order by taking into consideration all the aspects i.e., the disability sustained by the claimant, nature of treatment undergone by her, amount spent by her for her treatment, pain and suffering, loss of amenities in life and for physiotherapy treatment duly taking into consideration Exs.A.4 to A.10. Thus, the amount of Rs.20,00,000/- awarded by the tribunal towards compensation under various heads cannot be said to be on higher side. Therefore, we see no reason to interfere with the quantum of compensation awarded by the Tribunal.

12. Insofar as the liability of the appellant to pay the compensation is concerned, a perusal of the impugned judgment clearly shows that the Tribunal has categorically held that the insurance company is liable for payment of compensation as the crime vehicle was authorized to carry about nine persons and the claimant, her seven friends apart from the driver were travelling at the

time of the accident and the insurance company cannot escape the liability on account of Act policy. The findings of the Tribunal in paragraph Nos.17 and 18 of the impugned judgment are necessary to be reproduced herein for better appreciation of the matter.

"17. It is the case of the claimant that the Tata sumo given by known people of her father. The claimant specifically denied the suggestion put by the counsel for the second respondent that the claimant and her friends contributed money and hired the crime vehicle on the date of the accident. The first respondent i.e., owner of the crime vehicle in his counter pleaded that the crime vehicle was not on hire and the crime vehicle was given by him to the claimant and her friends to attend the interview. Though the charge sheet filed by the police against the driver of the Tata Sumo, it is mentioned that the claimant along with her friends being engaged the Tata Sumo bearing No.AP 15 AF 3084 (old corresponding No.GJ 01 AP 8139) and went to attend the interview. Except the allegation in the charge sheet, the second respondent has not placed any cogent and convincing evidence to substantiate the said contention as to the amount contributed by the claimant and her friends and the details of the hired amount. The bare allegation made in the charge sheet that they hired Tata Sumo is not sufficient to hold that Tata sumo was being taken by the claimant and her friends on hire. The burden squarely lies on the second respondent to establish the said fact that the crime vehicle Tata sumo was used on hire by the claimant or her friends as such it cannot be said that the crime vehicle Tata sumo was used in contravention of the above mentioned conditions of Ex.B1 policy.

18. It is not in dispute that the crime vehicle Tata sumo is authorized to carry about nine person. Undisputedly, the claimant and her seven friends and the driver were traveling at the time of the accident. The decisions cited by the learned counsel for the claimant in New India Assurance Company Limited Secunderabad v. Palamoni Suresh and other (2010(3) ALD 229) and United India Insurance Co. Ltd., Branch Sangareddy v. Ahmadi Begum and others (2011(2) ALD 14) are quite relevant to the facts and circumstances of this case. The Hon'ble High Court in the said two cases held that if a private vehicle is allowed to carry persons other than the owner or driver as per the conditions of the registration, all such persons come within the exception "third party". The facts of the present case are similar to the facts of the said decisions. In this case also, the claimant along with her friends was allowed to travel as per the conditions of the registration and as such the claimant squarely has fallen under the category of third party who has insured against the accident. I have carefully gone through the decisions cited by counsel for second respondent and I am of the view that they are not relevant to the facts and circumstances of the present case. The second respondent insurance company is liable for payment of compensation and it cannot escape the liability on the account of Act policy. Therefore, the liability to pay the compensation to the claimant is on the respondent Nos.1 and 2, as such they are jointly and severally liable to pay the compensation."

13. From the above, we are of the view that the Tribunal has rightly held that both the respondents are jointly and severally liable to pay the compensation. Therefore, we see no reason to interfere with the said findings.

14. Coming to the aspect of rate of interest awarded by the Tribunal, the claimants are entitled to interest @ 7.5% per annum on the compensation awarded by the Tribunal from the date of petition till realization, as per the decision of the Apex Court in *Rajesh and others v. Rajbir Singh and others* 2013 ACJ 1403 = 2013 (4) ALT 35. Hence, the interest granted by the Tribunal @ 8% per annum is reduced to 7.5% per annum on the awarded amount of Rs.20,00,000/- from the date of petition till the date of realization. Except the said modification, the remaining operative portion of the impugned judgment is not disturbed.

15. Accordingly, the M.A.C.M.A. is allowed in part as indicated above. No costs.

Miscellaneous petitions, if any, pending shall stand closed. No costs.