HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

M.A.C.M.A.No.795 of 2006

<u>JUDGMENT:</u>

The instant appeal is preferred by the petitioner - claimant in M.V.O.P.No.1882 of 2001 challenging the order dated 21.11.2005, on the file of Chairman, Motor Accidents Claims Tribunal –cum- IV Additional District Judge, (Fast Track Court), Nizamabad, whereby and whereunder the claim, of the petitioner for Rs.3,00,000/- as compensation for the injuries said to have sustained by him in a motor accident, was dismissed on the ground that he was travelling in his own vehicle which was run as a taxi and he has not paid any additional premium to cover his own risk as the owner of the vehicle.

For convenience sake, the parties hereinafter referred to as they were arrayed before the Tribunal in the O.P.

Facts, in brief, are that, on 06.11.2001, at about 8.30 P.M, while the petitioner was travelling in an auto bearing No. AP 25 T 6897 from Thirumanpally Village towards Gannaram side, along with one Shaik Mahaboob, and when it reached Thirumanpally Village limits, in front of Raja Rajeshwari Rice Mill on Nagpur to Hyderabad Road High Way No.7, Dichpally Mandal, Nizamabad District, since the driver of the auto driven it in a rash and negligent manner at high speed and unable to control, turned upside down and fell in a road side ditch, during which process, the petitioner came under the auto and received fractures to his left femur, left foot, right foot and other injuries on his person. He claims that he was immediately shifted to Government Hospital, Nizamabad, where he was treated by Dr.Dhoom Singh, Orthopaedic Surgeon, and a team of doctors. Thereafter, he was treated at Amrutha Laxmi Multi Specialty Hospital, Nizamabad by Dr. G.Jaya Prakash. According to him, both legs were operated and rods were inserted. He also states that, another person, Shaik Mahaboob, received grievous injuries. He claims that he sustained permanent disability and, though, Rs.13,30,000/- was estimated, under special and general damages, but, restricted his claim to Rs.3.00 lakhs seeking joint and several liability against the sole respondent, being the insurer of the auto.

Respondent – Insurance Company opposed the claim by filing counter.

The Tribunal, in order to fix responsibility for the accident, framed three issues. During enquiry, the petitioner, besides examining himself as PW.1, examined Dr.G.Jaya Prakash as PW.2, and marked Exs.A.1 to A.44 besides marking Ex.X.1, case sheet issued by the Government Hospital, Nizamabad. On behalf of the respondent, a Senior Assistant from its local branch office was examined as RW.1, and a copy of policy was marked as Ex.B.1, and photostat copy of the driving licence of the driver of auto was marked as Ex.B.2.

The Tribunal, having heard arguments on both sides, though, held issue No.1 in favour of the petitioner, but, on issue No.2, elaborately discussing on factual aspect, finally held, in view of admission of PW.1, that he was the owner of crime vehicle and, by the time of accident, he was travelling in the auto and, since no additional premium was paid to cover the risk of owner as per Exs.A.40 and B.1, holding that the owner of the vehicle was not covered under the policy, dismissed the claim petition.

It is the aforesaid order which is under challenge mainly contending in the grounds, that the Tribunal ought to have seen that the petitioner, though owner of the vehicle, was travelling as a passenger and that he was not driving the vehicle at the time of accident and, thereby, ought to have determined the compensation and ought to have awarded the same. The petitioner has also raised other ground touching partial disability said to have sustained by him. It is also stated, in the grounds, that the Tribunal ought not to have held that the risk of the owner was not covered under the policy, and ought not to have observed 'admittedly no additional premium was paid to cover the risk of the owner of the vehicle', and, hence, sought to set aside the order and decree of the Tribunal, and award the compensation.

Heard Sri P.Radhiv Reddy, learned counsel for the appellant, and Sri V.Venkatarami Reddy, learned counsel for the respondent – Insurance

Company, and perused the material on record.

During the course of arguments, learned counsel for the appellant fairly concedes that Exs.A.40 and B.1, which are one and the same, would reflect that no additional premium was paid to cover the risk of owner and, therefore, concedes that there is no merit in the appeal preferred by the appellant.

Learned counsel for the respondent has, in fact, placed reliance on a decision of this Court, in United India Insurance Company Limited v. Madhukar Rao, in an identical situation, where this Court held that the Insurance Company cannot be fastened with liability when no additional premium was paid to cover the risk of owner and the owner, though, travels in his vehicle as a passenger, cannot be construed as a passenger or as a third party. Hence, there is no merit in this appeal.

The Appeal is, accordingly, dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand disposed of.

A.SHANKAR NARAYANA,J

Date: 16.04.2015

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