THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1613 OF 2009

JUDGMENT:

The present appeal is preferred by respondent No.2 – United India Insurance Company Limited in O.P.No.1154 of 2004 on the file of Chairman, Motor Accidents Claims Tribunal – cum – II Additional District Judge (Fast Track Court), Nizamabad, aggrieved over the order and decree, dated 06.12.2006, passed in the said O.P., fastening liability on it, despite the fact that there was fundamental violation of the terms and conditions of the policy, since respondent No.1 – claimant was travelling as an unauthorised passenger or fare paid passenger in the DCM Van, which is a goods vehicle, and, though, the contents in F.I.R. and Charge Sheet, would demonstrate the stand projected by PW.1.

2. By the aforesaid order, the Tribunal has granted Rs.1,06,000/- as compensation with interest at 7.5% per annum for the partial amputation of right pointing finger of respondent No.1 – claimant, mulcting liability on both the respondents, who are the owner and insurer of the DCM Van.

3. Heard Sri Naresh Byrapaneni, learned counsel for the appellant – Insurance Company, and Sri P. Radhive Reddy, learned counsel for respondent No.1 – claimant. Though, service was completed on respondent No.2 – owner of the DCM Van, none appears for him.

4. Learned counsel for the appellant would submit that the contents in Exs.A1 and A2, certified copies of F.I.R. and Charge Sheet, respectively, would, clearly, show that respondent No.1 was travelling in DCM Van to attend a marriage function and in the event of such an averment made in Ex.A1, marked by respondent No.1 herself, nothing more is required in viewing that respondent No.1 was an unauthorised passenger or a fare paid passenger, and as such, she cannot be construed as a coolie and no liability can at all be fastened on the appellant - Insurance Company, since it is not obligated with the duty to indemnify the owner of the vehicle, when the owner commits breach of the terms and conditions of the policy.

5. Learned counsel for respondent No.1 would concede to the facts recorded in Exs.A1 and A2. Even PW.1, in her cross-examination, conveniently expressed ignorance as to the contents mentioned in Exs.A1 and A2 in relation to whether respondent No.1 was travelling in the DCM Van to attend a marriage.

6. Be that as it may, certainly, respondent No.1 is to be construed as unauthorised passenger or fare paid passenger, which would amount to violation of the terms and conditions of the policy. The same was ignored by the Tribunal, somehow. Therefore, the appeal deserves to be allowed setting aside the order and decree passed by the Tribunal to the extent of fastening liability on the appellant – Insurance Company.

7. Accordingly, the appeal is allowed setting aside the order and decree passed by the Tribunal to the extent of fastening liability on the appellant – Insurance Company, while maintaining the order and decree under challenge so far as fastening liability on respondent No.2–owner of the DCM Van is concerned.

8. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

September 07, 2016.
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