HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.181 of 2010

JUDGMENT:

The injured claimant of M.V.O.P.No.34 of 2006, maintained the claim under Section 166 of the Motor Vehicles Act (for short 'the Act'), for a compensation of Rs.1,50,000/- against the driver, owner and insurer of the single seating capacity of trolly truck auto rickshaw bearing No.AP 31 AS T/R 3210, with averments of he engaged the truck to take his wooden cutting machine, being carpenter by avocation and from alleged rash and negligent driving of the driver of the truck at NH.5 road on 12.01.2005 at about 5.00 p.m., the auto turned turtle by the road side, from which he sustained multiple injuries and from contest by the respondents particularly of the insurer-3rd respondent of no liability of policy not covered the risk for no additional contractual liability besides no seating capacity being meant for driving of the driver with single seat as per permit and the tribunal having accepted the contention of the insurer particularly, from the evidence of RWs.1 and 2 with reference to Exs.B1 to B10, exonerated the insurer by fixing liability against the driver and owner, from the finding of the accident was result of the rash and negligent driving of the 1st respondent-driver of the 2nd respondent-owner, it is impugning the said award to exonerate the insurer and also on the quantum, present appeal is filed.

2. The contentions of the learned counsel for the appellant-claimant in the grounds of appeal vis-à-vis oral submissions that the tribunal gravely erred in not considering the factum of Rs.25/- paid under the policy additionally, to cover the risk and thereby, the risk of the injured claimant is covered and hence the exoneration of the insurer is unsustainable, apart from the quantum awarded is utterly low, to enhance.

3. Whereas, it is the submission of the learned counsel for the insurer-3rd respondent, from the owner-2nd respondent served failed to attend and driver-1st respondent endorsed as not necessary party, taken as heard, that the award of the tribunal holds good, there is nothing to interfere to fasten any liability on the insurer for Rs.25/- paid is to cover the risk of the driver and Act Policy, no way covers the risk, as laid down by the Apex Court in National Insurance Co. Ltd. v. Prembai Patel[1] on the scope of Section 147 of the Act, for not covered within the proviso (1)(c) of Section 147, for no additional contractual liability

[1] AIR 2005 SC 2337

under the proviso (2) of the Act much less the deceased or travelling as an employee or workman under the registered owner and thereby sought for dismissal of the appeal.

4. Heard and perused the material on record.

5. The Apex Court in Prembai Patel (supra) held even an Act Policy covers the risk at least to the extent of Workmen's Compensation Act claim, in the absence of additional premium paid as per clauses (a) to (c) of proviso (1) of Section 147 of the Act, for the person to travel with goods must be engaged by the owner. Here, it is not such a case from the very claim petition averments of working under the owner as claimed independently owned the machine and carrying wooden cutting machine, having engaged the vehicle, thereby Act Policy not covered. So far as the policy covered additional risk by collecting premium particularly of the injured if any concerned, what Rs.25/- paid under the policy as L.L. for operation and maintenance is for the driver or cleaner at best in operation and maintenance of the vehicle and not for any third party, who takes his goods as owner of goods from the very claim of the claimant. Thus, the tribunal is right in holding that the policy not covered the risk of the injured, thereby, there is nothing for this Court to sit in appeal to fasten any liability

on the insurer thereby the appeal against the 3rd respondent is liable to be dismissed, confirming the award of the tribunal.

6. So far as insufficiency of the quantum awarded by the tribunal is concerned, from the evidence of the injured claimant vis-avis Ex.A5-Disability certificate of the medical board, Ex.A4-wound certificate, the injured sustained one grievous injury to the temporal region of head measuring 4x2x½ c.m. and two simple injuries. The disability certificate issued by the Medical Board under Ex.A5 shows a mild weakness to assess as 25%partial. Thus, taken from the sake, for no evidence of it affects the avocation from said mild weakness much less carpenter to pursue, thereby, to award lump sum for the grievous injury, what the tribunal awarded of Rs.30,700/- including medical expenses, treatment, loss of earnings are to be enhanced. Hence, it is just to award Rs.4,000/- for the two simple injuries, Rs.30,000/- for the grievous injury with the complication supra, Rs.4,000/- for medical expenses (the bills produced of Rs.2,700/-), attendant charges and loss of earnings and Rs.5,000/- towards transport charges. Thus, in total Rs.43,000/- with interest at 7.5% p.a. is the just compensation.

7. Accordingly and in the result, while confirming the award of the tribunal insofar as exoneration of the 3rd respondent-insurer, by fixing liability on the driver and owner concerned, the compensation awarded of Rs.30,700/- is enhanced to Rs.43,000/-. In other respects, the award of the tribunal holds good. No costs.

8. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:17-11-2016
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