HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2050 OF 2009

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') by respondent No.2 - The Branch Manager, New India Assurance Company Limited in M.V.O.P. No.219 of 2005, on the file of the Chairman, Motor Accident Claims Tribunal - cum - District Judge, Ongole (for short 'the Tribunal'), challenging the liability fastened on it, by the order and decree, dated 19-07-2007, whereby and where-under, a sum of Rs.40,000/- was awarded as compensation with interest at 7.5% per annum thereon as against the claim of Rs.2,00,000/- laid by the petitioner under Section 166 of the Act against respondent Nos.1 and 2.

2. Respondent No.2 and the appellant herein, who are owner and insurer of Auto rickshaw bearing registration No.AP 27V 1524, respectively, are respondent Nos.1 and 2, respectively, while respondent No.1 is the petitioner in MVOP before the Tribunal.

3. For the sake of convenience, the parties herein are referred to as they were arrayed in MVOP.

4. The facts, in brief, are that on 25-10-2004 at about 11.30 a.m., when the petitioner, who is a rickshaw puller, reached in front of house of one Ch.Yanadi, an auto rickshaw bearing registration No.AP 27V 1524 driven by its driver in a rash and negligent manner

at high speed, came and hit him, due to which, he sustained fracture to his right ankle. He, therefore, laid the claim seeking Rs.2,00,000/- as compensation against respondent Nos.1 and 2.

5. Respondent No.1, owner of the auto-rickshaw, remained *ex parte*.

6. Respondent No.2, its insurer, field counter opposing the claim.

7. The Tribunal having framed three (3) issues, examined PWs.1 and 2 and marked Exs.A-1 to A-4 on behalf of the petitioner, while no witnesses were examined on behalf of respondent No.2, but, copy of insurance policy, was marked as Ex.B-1.

8. The Tribunal having taken up issue Nos.1 and 2 together, recorded a finding that the accident did occur due to rash and negligent driving of the driver of the auto-rickshaw; and on quantum of compensation, the Tribunal taking into consideration of two injuries, one of which was compound fracture of upper 1/3rd of both bones (tibia and fibula), granted a sum of Rs.40,000/- which includes loss of earnings, treatment and medical expenses etc. as compensation with interest at 7.5% per annum against respondent Nos.1 and 2 jointly and severally.

9. Challenging the liability mulcted on respondent No.2 – Insurer, the present second appeal is preferred by it, contending in the

grounds of appeal that the policy was not in force on the date when the accident occurred and, therefore, respondent No.2 is not liable to pay any compensation.

10. Heard Sri T. Ramulu, learned standing counsel for the appellant - Insurer. Though service of notices completed on respondent Nos.1 and 2, one appears for them.

11. Perused the order and the material on record, both, oral and documentary.

12. The only question that arises for consideration is:

> Whether the policy under Ex.B-1 was in force on the date of taking place of the accident?

13. The policy shows that it was valid for the period from 23-09-2003 at 17.00 hours to midnight of 22-09-2004. It is not in dispute that the accident did occur on 25-10-2004. Therefore, the policy was not in force on the date of accident. Somehow, the Tribunal while dealing with issue Nos.1 and 2 in paragraph No.4 records thus:

> "Thus, it establishes that the accident was occurred due to rash and negligent driving of the crime vehicle by driver ofR1 insured with R2 as per Ex.B1 policy that covers the risk and thus R1 & 2 are liable to compensation."

It appears that the learned counsel for Insurance Company has not properly presented the factual aspect as well as the validity of Ex.B-1 or the coverage period before the Tribunal. Thus, the Tribunal, somehow, went wrong in making such an observation and holding that respondent No.2 - Insurer is liable to pay the compensation, despite the fact that Ex.B-1 does not cover the date of accident, and the period expires more than a month prior to the date of the accident.

14. Hence, the appeal is allowed setting aside the order and decree passed by the Tribunal against the appellant - respondent No.2, however, holding that respondent No.1, owner of the vehicle, is liable to pay the compensation. No order as to costs.

However, it is made clear that if respondent No.1, who is petitioner in MVOP, has withdrawn any amount, he is at liberty to recover balance amount from the owner of the vehicle, and Insurance Company is at liberty to recover the amount withdrawn by the petitioner from the owner of the vehicle.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

September 12, 2016.
Mgr