HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A No. 1546 OF 2009

JUDGMENT:

The present appeal is preferred by the second respondent-insurance company in M.V.O.P.No.263 of 2006 on the file of the Special Sessions Judge for SC ST (POA) Act-cum-VI Additional District and Sessions Judge, Kurnool-cum-Chairman, Motor Accidents Claims Tribunal, Kurnool, aggrieved over the judgment and decree dated 16.06.2008, in the said M.V.O.P, mainly on the ground that the Tribunal went wrong in fastening liability on the insurance company, though, the respondent/claimant, who sustained injuries was actually traveling in the tractor trolly bearing No.AP 21 V 7316/7317 as unauthorized passenger and that the driver of the vehicle was holding driving licence only to drive non-transport vehicle but not transport vehicle.

2. Heard Sri S. Agastya Sarma, learned Standing Counsel for the appellant.

3. Service of notice was completed on respondents 1 and 2, who are the injured claimant and owner of the crime vehicle respectively. But, none appears for them.

4. A perusal of the FIR would show that the claimant was travelling in the tractor trolly along with others. Though, she claimed that she was travelling as a coolie in tractor trolly, but there is absolute

prohibition to travel in it. In case the claimant was engaged as a coolie, her risk is covered by the policy. The tractor trolly is only for the purpose of loading and unloading, but not to travel along with the load or without being loaded. The Tribunal somehow, opined that the claimant was a coolie on the tractor itself, without there being any further evidence on her side, despite the evidence of R.W.1 projecting the same. This apart, the copy of driving licence filed by R.W.1 and marked as Ex.B.2 shows that the driver of tractor was holding driving licence to drive non-transport vehicle, but he was driving transport vehicle in contravention of the licence and terms and conditions of the policy.

5. In that view of the matter, certainly, the finding recorded by the Tribunal fastening liability on the insurance company cannot be sustained. Hence, the same is set aside exempting the insurance company from its liability. However, in regard to other respects, the judgment and decree passed by the Tribunal is maintained giving liberty to the claimant to recover the amount from the owner of the vehicle.

6. It is brought to the notice of this Court that the appellant has deposited 50% of the decretal amount with interest and costs, in pursuance of the order dated 26.02.2009 in M.A.C.M.A.M.P.No.1114 of 2009. In case the said amount is still lying to the credit of the O.P, the appellant is at liberty to seek return of the same. In case, the said amount is already withdrawn by the claimant, the appellant is at

liberty to recover the same from the owner of the vehicle. The petitioner is at liberty to recover the compensation due from the owner of the vehicle, who is respondent No.1 in the original petition.

7. Subject to the above, the Appeal is allowed. No order as to costs.

8. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

A. SHANKAR NARAYANA, J

Date: 24.08.2016
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