THE HON'BLE MRS JUSTICE ANIS

M.A.C.M.A.Nos.4430, 4474, 4475, 4476, 4479 and 4480 of 2008

COMMON JUDGMENT:

These appeals are filed by the appellant/respondent No.2-insurance company under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the awards dated 05.03.2008 passed by the I Additional Motor Accidents Claims Tribunal, Nizamabad, in O.P.Nos.1581, 1563, 1580, 1562, 1564 and 1565 of 2004 awarding compensation of Rs.70,500/-, 72,500/-, 62,750/-, 65,750/-65,750/- and 72,500/- respectively.

2. The first respondent in each of these appeals filed the above O.Ps under Section 166(1)(a) of the Act, claiming compensation of Rs.3,50,000/-, 3,50,000/-, 2,50,000/-, 2,50,000/-, 3,50,000/- and 3,00,000/- respectively on account of the injuries sustained by them in a motor vehicle accident.

3. For the sake of convenience, the parties are referred to as arrayed in the O.Ps before the Tribunal.

4. The petition averments made in the petitions are as follows:

The petitioners stated that on 11.10.2004 they were travelling in an auto rickshaw bearing No.AP-23-U-1434 for going to Toopran and when they reached the outskirts of Toopran, the driver of the auto rickshaw drove the vehicle in a rash and negligent manner and dashed against another auto which was coming in the opposite direction. Due to the said accident, the petitioners sustained simple and grievous injuries and immediately thereafter they were shifted to hospital, where they have undergone treatment and spent Rs.50,000/- each towards medical expenses. According to the petitioners, due to the rash and negligent driving of the driver of the auto rickshaw, the accident occurred. Therefore, they prayed the Court to grant compensation as claimed in the O.Ps.

5. The first respondent, who is the owner of the vehicle, remained *ex parte* before the Tribunal.

6. The brief averments made in the written statement filed by the 2nd respondent-insurance company are as follows:

The 2nd respondent put the petitioners to prove the manner of accident, nature of injuries, age and income of the injured. It was specifically pleaded that the driver of the vehicle was not having valid and effective driving licence and that the crime vehicle was carrying more than 8 persons, thereby violated the terms and conditions of the policy. Therefore, the 2nd respondent prayed that the insurance company is not liable to pay any compensation.

7. Basing on the pleadings, the Tribunal framed three issues and to substantiate their claim, the petitioner in the respective O.Ps was examined as P.W.1 and got marked Exs.A.1 to A.6. On behalf of the second respondent, no oral evidence was adduced but got marked Ex.B.1.

8. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the auto rickshaw and awarded compensation of Rs.70,500/-, 72,500/-, 62,750/-, 65,750/- 65,750/- and 72,500/- respectively together with interest @ 7.5%

per annum against respondents 1 and 2. Aggrieved by the award passed by the Tribunal, the 2nd respondent-insurance company filed the present appeals.

9. Learned counsel for the 2nd respondent-insurance company argued that as per the terms and conditions of the policy, only three passengers were covered but at the time of accident, six persons were travelling in the auto rickshaw and, therefore, the insurance company is not liable to pay any compensation to the other three passengers who were overloaded in the auto rickshaw. Learned counsel has contended that in view of the judgment of the Hon'ble Supreme Court in ***National Insurance Co. Ltd vs. Anjana Shyam and others*[1]**, the insurance company is bound to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy and therefore, 2nd respondent is liable to pay compensation only in favour of the claimants in M.A.C.M.A.Nos.4430, 4474 and 4480 of 2008. It is also argued that half of the amount was already deposited and was withdrawn by the petitioners and therefore prayed the Court to grant permission to the insurance company to recover the said amount from the owner of the vehicle and to direct the claimants, against whom the award is going to be set aside, to recover the compensation from the owner of the vehicle. Learned counsel further argued that since the Doctor was not examined to prove the injuries, the quantum of compensation awarded by the Tribunal needs interference and has to be reduced.

[1] ***2007 ACJ 2129***

10. On the other hand, learned counsel for the petitioners fairly conceded that in view of the judgment of the Supreme Court in ***Anjana Shyam***'s case (1 supra), the claimants in M.A.C.M.A.Nos.4430, 4474 and 4480 of 2008 are entitled to claim compensation against the 2nd respondent-insurance company. In so far as other claimants are concerned, the learned counsel sought permission to claim the compensation amount from the owner of the vehicle. It is also argued that there is no need to reduce the quantum of compensation, as the petitioners suffered grievous injuries in the accident and the insurance company has not produced any evidence to disprove the said fact.

11. Having regard to the submissions made by the learned counsel for both parties, the only point, which is to be decided in these appeals, is whether the appellant/2nd respondent-insurance company had made out any case to set aside the awards passed by the Tribunal?

12. A perusal of the record shows that there is no dispute that the accident occurred on 11.10.2004 due to the rash and negligent driving of the driver of auto rickshaw bearing No.AP-23-U-1305. Though the 2nd respondent-insurance company has raised a dispute regarding the quantum of compensation, as it has not adduced any oral or documentary evidence to disprove the evidence of injured-P.W.1 in the respective O.Ps regarding the injuries received by them, the quantum of compensation awarded by the Tribunal needs no interference and the 2nd respondent-insurance company is not entitled for reduction of the quantum of compensation.

13. In ***Anjana Shyam***'s case (1 supra), the Hon'ble Supreme Court held that:

> *"....Then arises the question, how to determine the compensation payable or how to quantify the compensation since there is no means of ascertaining who out of the overloaded passengers constitute the passengers covered by the insurance policy as permitted to be carried by the permit itself? As this court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident. It serves a social purpose. Keeping that in mind, we think that the practical and proper course would be to hold that the insurance company, in such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy....."*

From the above, it is evident that the insurance company has to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy and, therefore, the claimants in M.A.C.M.A.Nos.4430 and 4474 and 4480 of 2008, who were granted higher compensation, are entitled to claim compensation from the 2nd respondent-insurance company.

14. So far as M.A.C.M.A.Nos.4475, 4476 and 4479 of 2008 are concerned, the awards passed by the Tribunal in the respective O.Ps. are set aside and the insurance company is at liberty to recover half of the amount already deposited by it and withdrawn by the claimants in the respective O.Ps from the owner of the vehicle. It is made clear that these claimants are at liberty to make a claim for compensation against the owner of the vehicle.

15. In the result, M.A.C.M.A.Nos.4430 and 4474 and 4480 of 2008 are dismissed upholding the awards passed by the

Tribunal in the respective O.Ps and M.A.C.M.A.Nos.4475, 4476 and 4479 of 2008 are allowed.

Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

JUSTICE ANIS

Date:18.11.2016
JSU