**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**M.A.C.M.A.Nos.1114 AND 1807 of 2009**

**COMMON JUDGMENT:**

These two appeals are preferred by the claimant and the Insurance Company – 3rd respondent in O.P.No.163 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge at Karimnagar, feeling aggrieved by the order and decree, dated 23.12.2008, passed in the said O.P.

2. The insurer in the latter appeal challenged the aforesaid order on the ground that there has been fundamental violation of the terms and conditions of the policy as the tractor was not at all insured, though, the trailor was insured and the Tribunal, therefore, went wrong in granting compensation and, hence, sought to set aside the order and decree passed in the said O.P.

3. The former appeal is preferred by the claimant seeking enhancement of compensation on the ground that fair and just compensation was not awarded and the Tribunal went wrong in considering 50% disability as against 70% disability mentioned in the disability certificate issued by the District Medical Board.

4. The fact-situation occurring in the instant case is not in dispute, and, therefore, there is no need to advert to the same.

5. Though, elaborate arguments were tendered in regard to

the liability of the Insurance Company, the decision of the Hon'ble Single Judge of this Court in **New India Assurance Co. Ltd. v. Nunna Veera Venkata Satyanarayana @ Sathibabu (died) per L.Rs**[1] would be appropriate as it aptly fits to the fact-situation occurring in the present case. In paragraphs 24 and 25 of the said decision, this Court held thus:

> "On the other hand, if the reasoning in the said judgment of the Division Bench which is to the effect that a trailer attached to a motor vehicle is a part of the motor vehicle and that no separate insurance is required for a trailer is accepted, it equally applies to a converse case where a trailer alone is insured. Even otherwise, since I have taken the view that the trailer by itself is a motor vehicle and in the instant case, as the trailer was insured, the Insurer is obligated to discharge the liability arising out of the policy, notwithstanding that the tractor was not insured.
>
> The learned counsel however would contend that liability should not be fastened to the appellant since the owner of the tractor was not impleaded. The said contention cannot be accepted for the simple reason that the Insurer cannot avoid its obligation as an "insurer" of the "trailer". The Insurer is bound to discharge the liability arising out of a valid insurance policy notwithstanding that he may be entitled to avoid or cancel the policy as if he were the judgment debtor. Sub-section (1) of Section 149 of the Act is clear on this aspect. The only defences available to the Insurer are those enumerated in sub-section (2) thereof. It is not the case of the appellant that any such enumerated conditions, including the driving licence of the

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driver of the tractor who was impleaded as respondent in the O.P. are existed to avoid the liability on the said objection. By insuring only the trailer the Insurer has consciously entered into contract with the insured and undertaken the obligation to discharge the liability arising out of such contract and indemnify the insured. Avoiding such obligation is not just and proper."

6. There is no need to further examine the question whether the failure on the part of the owner to insure the tractor would disable the claimant to claim compensation. This apart, there is one more circumstance, which has come up during the course of arguments.

7. It is submitted by learned counsel for the appellant in the former appeal that the Insurance Company has not challenged the order and decree passed in O.P.No.2 of 2005 rendered by the very same Tribunal, wherein the claimant therein sought compensation for the injuries he sustained. The learned counsel has placed a photocopy of the order and decree passed in the said claim in O.P.No.2 of 2005, wherein a sum of Rs.1,13,250/- with interest at 7.5% per annum was granted as compensation.

8. The said O.P.No.2 of 2005 arises out of one and the same accident in which the claimant herein also sustained injuries. The only difference being that, in the present case, the injured happens to be the rider of the two-wheeler, whereas in the said O.P.No.2 of 2005, the claimant who sought compensation was the pillion rider. In such an

event, the other contentions raised by the Insurance Company that no vehicle number was mentioned in the FIR and, subsequently, it was introduced during the course of investigation done by the Investigating Officer, who filed the charge sheet, and that there has been contributory negligence, cannot at all be accepted for the reason that there has been a definite finding recorded by the Tribunal on the aspect of negligence on the part of the driver of the tractor, which was based on legally acceptable evidence let in by the claimant in the present O.P.

9. The appellant in the former appeal, who is the claimant in the present O.P, though, claimed enhancement of compensation, a perusal of the order under challenge would clearly show that the compensation awarded by the Tribunal is just and adequate in the circumstances, as the Tribunal had occasion to deal with the evidence of the Medical Officers examined as P.Ws.2 and 3 and rightly arrived at 50% disability as against 70% mentioned in the disability certificate issued by the Medical Board, assigning the reason that none of the doctors, who subscribed their signatures to the disability certificate, were examined. Thus, viewed from any angle, there is absolutely no merit in both the appeals.

10. Both the appeals are, accordingly, dismissed confirming the order and decree, dated 23.12.2008, in O.P.No.163 of 2007 passed by the Tribunal, in all respects. There shall be no order as to costs.

11. As a sequel thereto, pending miscellaneous applications, if any in these appeals, stand disposed of.

**A. SHANKAR NARAYANA, J**

28.10.2016
v v