THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1286 OF 2009

JUDGMENT:

The present appeal is preferred by respondent No.2 - insurer in O.P.No.414 of 2005 on the file of Chairman, Motor Accidents Claims Tribunal – cum – Special Judge for the Trial of Offences under S.Cs and S.Ts (POA) Act – cum – VI Additional Metropolitan Sessions Judge – cum – XX Additional Chief Judge, Secunderabad, aggrieved by the order and decree, dated 01.09.2007, passed in the said O.P. to the extent of fastening liability on it jointly and severally with the insured.

2. Heard Ms. I Maamu Vani, learned counsel for the appellant, and Sri P. Ganga Rami Reddy, learned counsel for respondent No.1. No representation for respondent No.2.

3. The only short question that arises for consideration in the present appeal is whether any premium was paid by respondent No.2 - insured herein extending the limit to third party property damage, if so, whether the Tribunal was right in mulcting liability jointly and severally on the insured and the insurer to pay a compensation of Rs.19,741/-, which stretches beyond the limit prescribed by the proviso to Section 147 (2) (b) of the Motor Vehicles Act, 1988 (for short, 'the Act').

4. Learned counsel for the appellant has drawn attention of this Court to Ex.B-1 and contends that, though, Ex.B-1 reflects that no additional premium was paid towards unlimited third party property damage, the Tribunal, somehow, ignored the said fact and fastened liability on the insurer to pay a total compensation of Rs.19,741/-, instead of restricting it to Rs.6,000/- so far as the insurer is concerned, in view of the statutory mandate referred to in the above.

5. Learned counsel for respondent No.1 would support the order under challenge, which is based on the nature of policy, that being comprehensive policy.

6. Perused the contents of Ex.B-1. Of course, such a plea was taken in paragraph No.11 of the counter filed before the Tribunal by the insurer, though, not in specific terms, but the effect is one and the same. Ex.B-1 does not reflect that any additional premium is paid by the insured to cover unlimited third party property damage. In such an event, certainly, the proviso to Section 147 (2) (b) of the Act would attract and since, there is a restriction restricting the liability to the extent of Rs.6,000/-, the order and decree under challenge requires modification to the extent of fixing liability on the Insurance Company only to the extent of Rs.6,000/-.

7. Accordingly, the appeal is allowed in part and the order and decree under challenge are modified making the appellant - Insurance Company liable to pay only Rs.6,000/- out of Rs.19,741/- awarded by

the Tribunal. Respondent No.1 herein is at liberty to recover the balance amount from respondent No.2 - insured.

8. So far as the contributory negligence averred is concerned, it is left open to the parties to ventilate the same in other appeals preferred by the appellant herein assailing the orders and decrees passed concerning the injuries sustained by the rider and pillion rider of the motorcycle.

9. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

August 22, 2016.
MD