THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.1423 of 2009

JUDGMENT:

Assailing the award and decree, dated 17.10.2002, in O.P.No.236 of 1999 passed by the Chairman, Motor Accidents Claims Tribunal-cum-Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal'), the present appeal is preferred by the National Insurance Company Limited - 2nd respondent in the said O.P., on the main ground that the Tribunal was not right in allowing the claim petition partly by granting an amount of Rs.1,25,000/- towards damage to the third party vehicle, as no premium was paid and, in fact, the policy issued was only an 'Act' policy.

2. The appellant herein is respondent No.2, while respondent Nos.1 and 2 herein, who are the owners of the lorries bearing registration Nos. ATK 8629 and AP 31 T 1668, respectively, are the petitioner and respondent No.1, respectively, in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts would show that on 07.06.1998, while the petitioner's lorry bearing registration No. ATK 8629 was proceeding from Hyderabad towards Godavarikhani on Rajiv Rahadhari with a load

of onions, garlic, potatoes, oil barrels etc., and reached the outskirts of Medhupuri, at about 10.00 a.m., another lorry bearing registration No. AP 31 T 1668, loaded with sand, coming in opposite direction driven at high speed in a rash and negligent manner, dashed the petitioner's vehicle, due to which, the petitioner's vehicle, which has a diesel tank, was partly gutted. The petitioner, stating that his vehicle worth Rs.3,50,000/- along with goods worth Rs.5,00,000/- was gutted in the said accident and he had to spend Rs.3,93,700/- towards repairing charges in a private mechanic workshop, sought a sum of Rs.1,75,000/- towards damage to the vehicle.

5. The Tribunal, having framed relevant issues and examining P.Ws.1 to 3 and marking Exs.A1 to A10 on behalf of the petitioner, and Ex.B1-copy of the insurance policy on behalf of the Insurance Company, allowed the claim petition partly by granting Rs.1,25,000/- with interest at 9% per annum, placing reliance on a decision of the Apex Court in **Oriental Insurance Co. Ltd. v. Cheruvakkara Nafeessu and others**[1].

6. The aforesaid order has been under challenge in the present appeal on the main ground that the policy issued was an 'Act' policy and it covers compensation only to an extent of Rs.6,000/- in respect of third party property claim and the Tribunal was not empowered to grant any amount beyond the said amount and, therefore, sought to set aside the award and decree passed by the Tribunal.

[1] 2001 (1) CCC 51 (SC)

7. Heard Sri R.K.Suri, learned counsel for the appellant, and Sri Venkat Raghuramulu, learned counsel for respondent No.1. None appears for respondent No.2, though, he was served with notice.

8. Perused the policy, the order under challenge and the evidence on record.

9. Ex.B1 would clearly show that the policy issued by the Insurance Company was an 'Act' policy and the same was indicated on the right side top portion of the 1st page of the said document. In such an event, certainly, clause (b) of sub-section (2) of Section 147 of the Motor Vehicles Act, 1988 would apply. Therefore, the Tribunal was wrong in granting Rs.1,25,000/- towards damage to the third party vehicle, in respect of which the compensation limit was only to an extent of Rs.6,000/- as per the statutory mandate. Hence, the amount of Rs.1,25,000/- granted by the Tribunal towards damage to the third party vehicle is reduced to Rs.6,000/-, but, however, the rate of interest at 9% per annum granted by the Tribunal is maintained on Rs.6,000/- till payment is made by the Insurance Company.

10. Accordingly, the appeal is partly allowed modifying the order passed by the Tribunal, by reducing the compensation, as indicated above, and confirming the same in all other respects. No order as to costs.

11. As a sequel, pending miscellaneous applications, if any, in this appeal shall stand closed.

JUSTICE A.SHANKAR NARAYANA

30.08.2016
v v