

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2330 OF 2009

AND

CROSS-OBJECTION (SR) No.37550 OF 2009

COMMON JUDGMENT:

On the main ground that driver-cum-owner of the auto-rickshaw bearing No.AP-1-V-1004, which is involved in the accident, did not possess valid and subsisting driving licence to drive the said auto-rickshaw, which was a transport vehicle, on the date of accident i.e., 07.09.2004, as reflected from the charge sheet contents marked as Ex.B-1 by the insurance company viz., National Insurance Company Limited being the insurer has preferred the present appeal challenging the award and decree dated 11.01.2008 in O.P. No.241 of 2005 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge (Fast Track Court), Adilabad, whereby and whereunder, a compensation of Rs.46,000/- was awarded with interest at 7.5% per annum, for the injuries sustained by the claimant, who is cross-objector.

2. Heard Smt. Ramani Jonna, learned counsel for the insurance company (appellant), Sri Venkateshwar Varanasi, learned counsel for the cross-objector (claimant), and Sri S. Surender Reddy, learned counsel for the insured, owner-cum-driver of the auto-rickshaw that involved in the accident.

3. It is true that the Tribunal in paragraph No.10 has recorded a definite finding that the driver of the auto-rickshaw was not holding valid driving licence and then relying on the ruling of the Hon'ble Supreme Court in **National Insurance Company Limited v. Swaran Singh¹**, directed the insurance company to pay compensation and recover the same from the insured.

4. The matter was adjourned having heard the arguments on the previous date of hearing as the learned counsel for the insured, owner-cum-driver of the auto-rickshaw, fairly stated that driver of the auto-rickshaw was holding valid driving licence at the relevant time and sought adjournment; and, today, a photostat copy of the driving licence and the extract issued by the Additional Licensing Authority dated 14.01.2009 have been placed for perusal which would show that the driver of the auto-rickshaw was holding both transport and non-transport licences and they were renewed periodically, and, even on the date of accident that took place on 07.09.2004, he must be possessing licence as the date of its issuance shows as 13.02.2001. However, since it is only a photostat copy, it is desirable in the interest of justice to remit the matter setting aside the order and decree under challenge to afford an opportunity to the driver-cum-owner of the auto-rickshaw, to establish that he was possessing valid subsisting driving licence to drive the transport vehicle i.e., auto-rickshaw at the relevant time.

¹ 2004 ACJ (1) = LC ACR 2004 (1) 321

5. In the circumstances, the order and decree under challenge are set aside and the matter is remitted to the Tribunal for disposal directing to afford an opportunity of hearing to the petitioner (claimant), insured, who is owner-cum-driver, and insurer of the auto-rickshaw by allowing them to lead further evidence touching the issue whether the driver of the auto-rickshaw involved in the accident was possessing valid driving licence to drive the same at the relevant time and to dispose of the claim petition within a period of six (6) months from the date of receipt of a copy of this judgment. If any amount is already deposited and withdrawn by the cross-objector (claimant), appropriate order would be passed by the learned Tribunal while disposing of the O.P.

6. Accordingly, the Civil Miscellaneous Appeal is allowed and consequently, the Cross-Objection (S.R.) stands disposed of. There shall be no order as to costs.

7. As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

December 23, 2016.

Note:

Dispatch C.C. of the order forthwith.

(BO)PV