HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2674 OF 2009

JUDGMENT:

The present Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, is preferred by the claimants - petitioners in O.P. No.73 of 2005 on the file of Chairman, Motor Accidents Claims Tribunal - cum - V Additional District Judge (Fast Track Court), Khammam, Kothagudem (for short 'Tribunal') aggrieved over the order and decree dated 17.11.2008, whereby and whereunder, the liability of respondent No.2 - New India Assurance Company Limited was exempted.

2. By the aforesaid order, as against the claim of Rs.4,00,000/- laid by the petitioners under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the Tribunal having framed the relevant issues, examined the witness and marked documentary evidence on behalf of the petitioners as well as insurer - respondent No.2, while determining the compensation at Rs.3,20,000/- and awarded the same with interest at 7.5% per annum against the owner, who is respondent No.1 alone, exonerating the insurer from the liability on the main ground that the driver of the auto-rickshaw bearing No.AP-20-U-7277, which caused the accident, did not possess valid subsisting licence at the relevant time.

3. Heard Sri Pulla Rao Yellanki, learned counsel for the petitioners (appellants), and Sri C. Buchi Reddy, learned standing counsel for the insurer - respondent No.2.

4. Though the process was completed on respondent No.1, owner of the auto-rickshaw that involved in the accident, none appears.

5. Perused the order and the decree under challenge and the evidence on record.

6. Learned counsel for the petitioners (appellants) placing reliance on the decision of the Hon'ble Supreme Court in **S. Iyyapan v. United India Insurance Company Limited and another**[1], sought to set aside the finding recorded by the Tribunal in exonerating the insurer from its liability to pay compensation while making a request to fix liability on the insurer also.

7. Learned standing counsel for the insurer would contend that the law laid down by the Hon'ble Supreme Court in **S. Iyyapan's Case**[1] is not applicable to the fact-situation occurring in the instant case, since admittedly the driver of the vehicle was not possessing any type of licence at all. In **S. Iyyapan's Case**[1], the driver was holding a valid driving licence to drive Light Motor Vehicle, but actually driven Mahindra maxi Cab and in the said context the Hon'ble Supreme Court held that mere fact that the driver did not keep any licence to

driver Mahindra Maxi Cab, which is a Light Motor Vehicle, the finding recorded by the High Court that the insurer was not liable to pay compensation because driver was not holding valid driving licence to drive commercial vehicle is wrong and set aside the order of the Hon'ble High Court and directed the insurer to pay the compensation making it liable for the same initially and to recover it from the owner. Such is not the fact-situation occurring in the instant case. Even admittedly, the driver of the auto-rickshaw did not possess any type of licence at all. When such is the situation, the decision in **S. Iyyapan's Case**[1] would not aid the petitioners to advance their case to fasten liability on the insurer, even initially.

8. Thus, there is absolutely no legal infirmity in the order under challenge warranting interference of this Court.

9. The appeal fails and is dismissed confirming the order under challenge. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

November 18, 2016.

PV

[1](2013) 7 SCC 62