HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1969 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by respondent No.2 – United India Insurance Company Limited, aggrieved by the order and decree dated 22.11.2001, passed in O.P.No.953 of 1997 by the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad District (for brevity "the Tribunal"), questioning the finding recorded by the Tribunal fastening liability on it to pay compensation for the damages to the third party property, which was determined at Rs.2,00,000/- with proportionate costs and interest @ 9% per annum, mainly on the ground that the owner of the offending lorry bearing No.AP 1/T 1257, who is respondent No.1 in the O.P., has not paid additional premium covering the risk of third party property damage.

2. The appellant herein is respondent No.2, respondent No.1 herein is the claim petitioner, and respondent No.2 herein is respondent No.1 in O.P.No.953 of 1997. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.953 of 1997 before the Tribunal.

3. The fact-situation occurring in the instant case is not in dispute between the parties.

4. Heard Sri Ravi Shankar Jandhyala, learned Standing Counsel for the appellant – insurer, and Sri V. Tulasi Reddy, learned counsel for the 1st respondent – claim petitioner. Though, notice is served on the 2nd respondent – owner of the offending lorry, none appears for him.

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

6. A perusal of Ex.A.8 – Xerox copy of Insurance Policy, relating to the offending vehicle belonging to the 1st respondent – owner and insured with the 2nd respondent – insurer, would show that it is a B-Policy, in which the liability to the public risk is shown as covering the risks of various situations and, so far as the risk of third party is concerned, it was unlimited upon payment of Rs.75/- by the 1st respondent – owner. But, so far as third party property damage is concerned, it appears that no amount, at all, was paid by the 1st respondent – owner. Therefore, the provision of clause (b) of sub-section (2) to Section 147 of the Act would govern the present situation, in which case, the claim petitioner is entitled to Rs.6,000/- towards damages to his property. But, somehow, this aspect was not considered by the Tribunal in proper perspective and there has been no

discussion touching Ex.A.8, at all, except stating that Ex.A.8 – Insurance Policy covers the risk of vehicle of the 1st respondent and the policy is a B-policy, for which the liability is unlimited, as ULTP has been mentioned in respect of the third party claims. When there is no specific mention about payment of any amount towards third party property damage in the policy and the relevant column is left blank, without specifying any amount being paid, it is difficult to construe that the limit of Rs.6,000/- provided by the aforesaid provision is inapplicable and the risk is unlimited, as viewed by the Tribunal.

7. Therefore, the order and decree dated 22.11.2001, passed in O.P.No.953 of 1997, is liable to be set aside, modifying the same and limiting the liability of the appellant – insurer to Rs.6,000/- only towards payment of third party property damage, as contemplated under Section 147 (2)(b) of the Act.

8. As could be seen from the proceeding sheet, the appellant – insurer has deposited half of the decretal amount with interest and costs, pursuant to the order dated 09.09.2002 passed by this Court in CMP.No.17351 of 2002, which also states that upon such deposit, the 1st respondent – owner was at liberty to withdraw the same without furnishing any security. It is also stated that pursuant to the

said order, the 1st respondent – owner had already withdrawn the said amount.

9. Hence, the appellant – insurer is at liberty to recover the amount withdrawn by the 1st respondent – claim petitioner by deducting Rs.6,000/- towards Statutory liability from the 1st respondent – owner in O.P.No.953 of 1997, and the 1st respondent – claim petitioner is at liberty to recover the balance amount from the owner of the offending vehicle.

10. Accordingly, the Civil Miscellaneous Appeal is allowed in part, and the order and decree dated 22.11.2001, passed in O.P.No.953 of 1997, is liable to be set aside, modifying the same, limiting the liability of the appellant – insurer to Rs.6,000/- towards payment of third party property damage, as contemplated under Section 147 (2)(b) of the Act. No order as to costs.

11. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

14.09.2016.
Msr

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