HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.4816 of 2008

JUDGMENT:

The 2nd respondent insurer among the two respondents including the owner of the public carriage tourist bus bearing No.AAM-3551, aggrieved by the award of the Tribunal in O.P.No.514 of 1999 dated 09.09.2005 passed by the Motor Accidents Claims Tribunal-cum-IV Additional District Judge (FTC), Mahabubnagar, maintained by the injured claimant under Section 166 of the Motor Vehicles Act (for short 'the Act') for Rs.1,00,000/-, from the contest by the insurer, for the 1st respondent remained exparte, mainly in saying there is no additional premium paid to cover the risk of cleaner and claimant injured was travelling as cleaner under the owner and thereby there is no liability to the insurer but for to indemnify for any third party coverage of risk and what all it covers to the passengers of maximum of 56 including driver and ticket collector if any for statutory liability with premium for passengers and thereby, the claim is liable to be dismissed against insurer. The Tribunal from the evidence on record of the injured-PW.1 with Exs.A.1 to A.8 and of RW.1-employee of the insurer with Ex.B1 policy observed that the injured even otherwise one of the passengers for no additional premium collected to cleaner other than collected for conductor and driver and as such for nothing more than 56 passengers were travelling with driver and ticket collector with cleaner, the insurer cannot avoid liability in fixing compensation of Rs.38,000/- with interest @ 9% per annum. It is impugning the same the present appeal is filed.

The learned counsel for the insurer reiterated the counter contest supra before the Tribunal with regard to evidence of RW.1 and Ex.B1 policy and placed reliance on the expression of the Apex Court in **Ramashray Singh Vs. New India Assurance Co. Ltd & Others**[1] on the question of indemnifying the risk arises only once there is policy covering risk and not otherwise.

Heard learned counsel for the appellant-insurer and for the respondents even served failed to attend, taken as heard to decide on merits and perused the material on record.

The fact that there are totally below 56 passengers including driver and ticket collector if any, not in dispute, the present claimant even as cleaner and not as a ticket collector, even policy does not cover the risk of cleaner other than risk of driver and ticket collector, if any, of the public carriage transport vehicle under Section 147 of the Act, even from Act policy once covered the risk up to 56 passengers including driver, from Ex.B1 policy and evidence of RW.1 not in dispute, the injured can be treated as a passenger for the passenger risk covered by the policy and thereby there is nothing to interfere with the award of the Tribunal in view of the above and particularly from what is laid down by the Apex Court in **National Insurance Co. Ltd. Vs. Anjana Shyam & Others**[2] that once policy covers risk of passengers and where there are any excess passengers even insurer cannot avoid liability, but for to indemnify to the highest claims to the maximum coverage of risk.

Accordingly and in the result, the appeal is partly allowed by reducing the rate of interest from 9% to 7.5% per annum and in other respects the award of the Tribunal holds good.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 18.08.2016
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[1] 2003 ACJ 1550

[2] 2007 (7) SCC 445