THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A. No.2447 of 2005

JUDGMENT:

This appeal is preferred by respondent No.3-Insurance Company in O.P. No.1071 of 2000 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, East Godavari, Rajahmundry, challenging the direction to pay the amount of Rs.57,000/-, over and above the amount of statutory liability of Rs.6,000/-, towards damages caused to the vehicle and recover the excess amount from the owner of vehicle.

Respondent No.1 herein filed the claim petition for Rs.1,75,000/- for the injuries sustained by him and for the damage caused to the vehicle Maruthi Esteem bearing registration No.AP.31.H.7777 in the accident that occurred on 01.12.1997 at Kadiam Village. It was alleged that on 01.12.1997 while he was proceeding to Rajahmundry from Anaparthi by driving the vehicle and when he reached near the Fisheries Department tank at Kadiam Village, a lorry bearing registration No.APP.3765, driven by respondent No.2 herein, dashed the said Maruthi Esteem Car, owned by the claimant.

The Tribunal, by its award dated 20.04.2005, awarded the damages of Rs.63,000/- to the vehicle and Rs.40,000/- to the injuries sustained by the claimant in the accident. In the award, respondent No.3-Insurance Company, who is the appellant herein, was given liberty to recover the amount paid in excess of its limited liability of Rs.6,000/- towards damages to the car from the insured-respondent No.3 herein. This appeal is directed only with regard to the said portion of direction to deposit and recover the excess amount awarded towards damages to the car. In giving such direction, the Tribunal relied on a decision reported in **Narender Singh v. Sudarshan Kumar (deceased by L.Rs)**[1], which relates to a comprehensive policy. In the present case, the policy is an act policy and a specific ground was taken that its liability is limited to Rs.6,000/- in the absence of additional premium to cover additional liability. Reliance was placed on a decision reported in **Golla Lakkam Kristaiah v. V.Subba Rao**[2]**.** In spite of the same, the above direction was given by the Tribunal.

It is clear from the above facts that Ex.B1 policy is an act policy and the liability of appellant is limited to Rs.6,000/-. When there is clear condition with regard to the liability, the appellant cannot be directed to pay the entire amount of damages to the car and recover the excess amount from the insured. In view of the same, the award dated 20.04.2005, directing the appellant to pay the amount of Rs.63,000/- and recover the amount of Rs.57,000/- from the owner of vehicle, is set aside, and the liability of appellant is confined to Rs.6,000/- towards damage to the vehicle, and the award, for Rs.40,000/- to the injuries sustained by the claimant and making the respondents 1 to 3 before the Tribunal as jointly and severally liable, is upheld.

Accordingly, this appeal is allowed to the extent indicated above. No order as to costs.

However, it is open to the claimant to recover the said excess amount of Rs.57,000/-, beyond the statutory liability of Rs.6,000/-, from the owner of lorry who caused the accident.

Miscellaneous Petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, **J**

01.02.2016

MVA

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[1] AIR 2004 NOC 384 (Delhi)

[2] 2003 ACJ 786