THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.NO.207 OF 2006

JUDGMENT:

This appeal is arising out of order and decree, dated 26.04.2005 passed in O.P.No.1028 of 1999 by the Motor Accident Claims Tribunal-cum-III Addl. District and Sessions Judge, Mahabubnagar at Gadwal.

2. Appellant is the New India Assurance Company-respondent No.2, respondents Nos. 1 to 3 are the petitioners-claimants and respondent No.4 is the respondent No.1 in O.P.No.1028 of 1999.

3. Petitioners 1 to 3-claimants, who are the legal heirs of one Balaram (hereinafter referred to as 'the deceased') claimed compensation of Rs.1,75,000/- against the owner and the insurer of the crime vehicle and the Tribunal on consideration of evidence of the claimants P.W.1 and the documents Exs.A1 to A4 and on the evidence of R.W.1 and the documents Exs.B1 to B4, has awarded compensation of Rs.1,51,000/- with proportionate costs and interest at 9 % per annum against the respondent Nos. 1 and 2.

4. Aggrieved by the award of compensation, the Insurance Company has preferred this appeal.

5. Heard the arguments of the learned counsel for the appeal and the respondents.

6. Learned counsel for the appellant submitted that the claimants have filed an application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), wherein the claimants have to prove the rash and negligent act on the part of the driver of the crime vehicle. The deceased in this

case himself was negligent in driving the vehicle and involved in the accident and therefore, claimants are not entitled to claim any compensation in this matter in view of violation of terms and conditions of the insurance policy under Section 147 of the Act.

7. He further submitted that the Tribunal has awarded interest at the rate of 9% p.a., which is highly excessive and is liable to be reduced to 7.5% p.a.,

8. No arguments have been advanced on behalf of the respondents in this matter.

9. The point that arises for consideration in this appeal is: Whether the Insurance Company is not liable to pay any compensation to the claimants and whether there is any violation of terms and conditions of the insurance policy?

10. Admittedly, this is a claim made under Section 166 of the Act claiming compensation of Rs.1,75,000/- on account of death of the deceased in a motor vehicle accident. The Tribunal on consideration of evidence held on issue No.1 that the deceased was working as a driver on the tractor and trailer, which involved in the accident and he was working under the employment of the respondent No.1. It was also observed by the Tribunal that on 20.02.1998 while the deceased was proceeding towards Nandimalla village with a load of water as per the instructions of the respondent No1, the accident occurred, when the tractor went reverse direction and fell into the canal. The Tribunal had given a clear and categorical finding on appreciation of evidence that the deceased died in course of his employment while driving the tractor of respondent No.1 and therefore, the Tribunal

held on issue No.1 that the accident occurred in course of employment of the deceased working under respondent No.1. Therefore, the insurer cannot avoid liability to pay compensation to the claimants as the accident occurred in the course of employment of the deceased. In view of the provision under Section 147 (1) (ii) (i) of the Act, the insurance policy is not required to cover the liability in respect of death, arising out of and in the course of employment of the employee of a person insured by the policy. The provision reads as under:

> " 147 (1) ....
>
> (ii) ...
>
> (i) to cover the liability in respect of the death, arising out of and in the course of employment of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than liability arising from the Workmen's Compensation Act, 1923 in respect of the death or, or bodily injury to any such employee-
>
> (a) engaged in driving the vehicle or
>
> (b) if it is a public service vehicle engaged as a conductor of the vehicle or any examining tickets on the vehicle or
>
> (c) if it is a goods carriage being carried on the vehicle or
>
> (ii) to cover any contractual liability"

The Tribunal held that the accident occurred in the course of employment of the deceased and accordingly allowed the claim petition awarding compensation of Rs.1,51,000/-. Therefore, there is no violation of terms and conditions of the insurance policy in this matter. The award passed by the Tribunal does not require any interference as it is not suffered with any illegality. Therefore, the appeal is devoid of merits and is liable to be dismissed.

11. In the result, the appeal is dismissed and the order in O.P., dated 26.04.2005 is confirmed. The appellant is directed to deposit balance of compensation amount

within two months from the date of receipt of a copy of this judgment. On such deposit, the respondent Nos. 1 to 3 are permitted to withdraw the entire amount. No order as to costs. Miscellaneous petitions, if any pending in this appeal shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 15TH DAY OF SEPTEMBER, 2017.
Hsd