

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

M.A.C.M.A.No.3450 of 2005

JUDGMENT:

Claimant in M.V.O.P.No.2605 of 2002 on the file of the IV Additional Chief Judge-cum-Motor Accidents Claims Tribunal, City Civil Court, Hyderabad, is the appellant in the present appeal, filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. Heard Sri V.Atchuta Ram, learned counsel for the claimant-appellant herein and Smt.A.Malathi, learned counsel for the 2nd Respondent/Insurance Company, apart from perusing the material available before this Court.

3. Claimant-appellant sustained injuries in an accident that took place on 29.04.2002. The appellant herein filed M.V.O.P.No.2605 of 2002 before the Tribunal under Section 166 of the Act, seeking compensation of Rs.2,00,000/- with interest and costs. The Tribunal, by way of an award, dated 4.5.2005, granted compensation of Rs.71,055/- with interest @ 9% p.a. from the date of the petition till the date of realisation.

4. By virtue of the said award, the Tribunal directed the owner of the vehicle only to pay the said compensation amount, while dismissing the petition against the 2nd Respondent/Insurance Company.

5. In the present appeal, claimant/appellant herein assails the said award to the extent of declining to fasten the liability to the Respondent Insurance Company. According to the learned counsel for the appellant, the order impugned to the extent of refusing to fix the liability on the Insurance company also is erroneous and contrary to law. In support of the said contention, the learned counsel for the appellant/claimant placed reliance on

the judgment in *S.Iyyapan v. United India Insurance Company Ltd. and Anr*¹.

6. On the other hand, it is the submission of the learned Standing Counsel for Insurance company that the Tribunal awarded exorbitant rate of interest of 9% instead of 7.5%.

7. In order to decide the issue in the present appeal, it would be appropriate to refer to the judgment of the Hon'ble Apex Court in *S.Iyyapan v. United India Insurance Company Ltd.* (1 supra). In the said decision, the Hon'ble Apex Court at paragraph 17 held as under:

“17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.”

8. In view of the law laid down in the above referred judgment, the present appeal is liable to be allowed, fixing the liability on the Insurance Company also to pay compensation amount.

¹ (2013) 7 SCC 62

9. Accordingly, this appeal is allowed, fixing the liability jointly and severally against the Respondents herein. It is also made clear that the Insurance Company shall pay compensation amount to the claimant and to recover the same from the owner of the vehicle. Appellant/claimant is entitled to the interest @ 7.5% instead of 9%. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 14.12.2017
DA





THE HON'BLE SRI JUSTICE A.V.SESHA SAI



M.A.C.M.A.No.3450 of 2005

14.12.2017

DA