HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.1254 OF 2004

JUDGMENT:

The present Civil Miscellaneous Appeal is filed by petitioner in O.P. No.961 of 1997 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Nizamabad (for short 'Tribunal') under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act'), requesting to enhance the amount granted towards damage caused to Padmini Car met with an accident, insured with respondent No.1 - M/s. National Insurance Company Limited on the ground that the amount of Rs.6,551/- awarded was, by any standards, on lower side according to the appellant - petitioner.

2. The appellant herein is the petitioner in O.P. No.961 of 1997, while respondent Nos.1 to 3 are arrayed as such.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid OP before the Tribunal.

4. Heard Sri K.M. Mahender Reddy, learned counsel for the appellant - petitioner. No representation for respondent No.1 - Insurer. Respondent Nos.2 and 3 concerned with erstwhile Andhra Pradesh State Road Transport Corporation, represented by its Depot Manager and Managing Director, are not necessary parties according to the petitioner as an endorsement is made to that effect in the cause title of the memorandum of grounds of appeal.

5. The learned counsel for the appellant would submit that the evidence of PW.2, who is a Mechanic, would clearly prove that the damage to the Car was anywhere between Rs.50,000 and Rs.60,000/- and the Surveyor appointed by respondent No.1 company examined as RW.1 has just peeped into the car from outside and did not actually inspect the car and the damaged parts and, therefore, the report given by RW.1 marked as Ex.B-1 cannot be relied on, and the Tribunal went wrong in relying on the said report and awarding Rs.6,551/-. The learned counsel is fair enough to say that no receipt was exhibited evidencing the payment of amount towards carrying out the repairs issued by the Surveyor. Thus, what has been on record is the evidence of PW.2. Though, Ex.A-4, receipt was issued by the Surveyor, dated 19.08.1996, but its author is not examined. Thus, evidence of PW.2, a mechanic and report of surveyor as Ex.A4, and the evidence of Surveyor as RW.1 and his report as Ex.B-1 are available from the respective sides. Had there been a receipt passed by the repairer of the Car in token of payment of amount for carrying out the repairs, the same would have been utmost help for entitlement of the amount claimed.

6. It is not in dispute that the policy is a comprehensive policy as per RW.2's evidence. RW.2 asserted in his evidence, that the owner of the vehicle has to approach the Arbitrator if he disagrees with the report of Surveyor, and the Tribunal has no jurisdiction to entertain a claim petition.

7. The Tribunal accepted Ex.B.1 report and awarded compensation of Rs.6,551/- based on the Surveyor's Report examined as RW.1 and Ex.B-1 marked through RW.1.

8. A perusal of the policy (Ex.B-6), which is Private Car Insurance 'B' Policy issued in the present case, so far as an arbitration clause is concerned, in specific terms it is expressed in clause '7' thus:

> "If any dispute or difference shall arise as to the quantum to be paid under the policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of a sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
>
> It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as herein before provided, if the Company has disputed or not accepted liability under or in respect of this policy. It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that award by such arbitrator/arbitrators of the amount of the loss or damage shall be first obtained."

Thus, it puts a restriction on either party approaching any Court or Tribunal except the Arbitrator where the amount claimed is towards loss or damage to the vehicle. That has been the reason why RW.2

had asserted in his chief examination that in case owner seeks excess amount than the amount arrived at by the Surveyor through his report, the party has to approach the Arbitrator. The express stipulation contained in clause '7' of the policy, certainly, bars granting of any amount by way of enhancement than the amount granted by the Tribunal based on Ex.B-1 report. Hence, there is no merit in the present appeal.

9. The appeal is, therefore, dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal shall stand closed.

A. SHANKAR NARAYANA, J

September 07, 2017
Mgr