

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A.No.234 OF 2005

JUDGMENT:

For the injuries sustained by respondent No.2 herein, the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Hyderabad – II, by order, dated 25.10.2004, in W.C.No.110 of 2002, awarded a sum of Rs.1,81,107/- towards compensation directing the appellant herein – insurer and respondent No.1 – owner of the offending vehicle to pay the said amount fixing joint and several liability. The learned Commissioner worked out the compensation in accordance with the formula taking statutory minimum wage at Rs.2,748/- per month and the percentage of disability at 50%, basing on the percentage of disability mentioned by each doctor i.e., PWs.2 and 3, at 45% and 35%, respectively.

2. The said order is under challenge in the present appeal mainly on the ground that the policy does not cover the risk of respondent No.2 – driver – applicant. That has been the main question of law formulated in the grounds of appeal.

3. Heard Sri S. Ashok Anand Kumar, learned counsel for the appellant – insurer, and Sri B. Parameswara Rao, learned counsel for respondent No.2 – applicant.

4. Though, respondent No.1 – owner was served with notice, none appears.

5. Learned counsel for respondent No.2 is fair enough to admit that the policy marked as Ex.A9, and also as Ex.B1, does not cover the risk of the driver.

6. In such an event, certainly, it is to be held that the finding recorded by the learned Commissioner is patently infirm, warranting interference. Therefore, the order under challenge is withheld and, accordingly, set aside so far as mulcting liability on the appellant - insurer is concerned, allowing the present appeal.

7. Learned counsel for the appellant as well as learned counsel for respondent No.2 would submit that the appellant has deposited the entire compensation amount and pursuant to the order, dated 04.08.2009, passed by this Court, respondent No.2 has already withdrawn 50% of the compensation amount deposited without furnishing security. It would be appropriate, in the said circumstances, to leave it open to the appellant – insurer to recover the amount withdrawn by respondent No.2 from respondent No.1 herein - owner of the offending vehicle. It is also open to respondent No.2 to recover the balance half of the compensation amount from respondent No.1 herein. Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

August 17, 2017.
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