THE HON'BLE SRI JUSTICE M.GANGA RAO

MA.CMA.NO.370 OF 2011

JUDGMENT

Insurance company preferred this appeal against award dated 16.04.2008 passed by Motor Accidents Claims tribunal (Fast Tract Court), Nizamabad at Kamareddy in O.P.No.294 of 2003, whereby the Tribunal partly allowed claim of the claimants awarding an amount of Rs.35,000/- with proportionate costs and interest at the rate of 7.5 per cent per annum from the date of the petition, till the date of realization, as against the claim of Rs.3,00,000/-, for the injuries received by the claimant,

2. Facts of the case are that on 07.01.2003, the 1st respondent / claimant, along with others, were traveling in the 2nd respondent's auto bearing No. AP 25-U-499, from Kamareddy to Narsannapally. At about 9.30 a.m., when the said auto reached the limits of Sarampally village near Vani Vidyalayam, its driver drove it in a rash and negligent manner at high speed and lost control. As a result of it, the auto went off the road, turned turtle and the claimant received injuries and he filed the claim petition under Section 166(1)(a) of Motor Vehicles Act, 1988 read with Rule 455 of A. P. Motor Vehicles Rules, 1989, claiming compensation of Rs.3,00,000/-

3. The insured remained ex party and insurer filed written statement denying the averments made in the claim petition.

4. Based on rival contentions, Tribunal framed the following issues for trial:

1. Whether the accident has taken place due to rash and negligent driving of the vehicle bearing No. AP -25-U-499 by its driver?
2. Whether the petitioner is entitled for compensation? If so to what just amount and against whom?
3. To what relief?

5. In support of his claim, claimant got examined himself as P.W.1 and marked Ex.A-1 to A-16. On behalf of respondent – insurer, R.W.1 was examined and Exs.B-1 to B-5, were marked.

6. Appreciating the evidence, both oral and documentary, Tribunal held that the accident occurred due to rash and negligent driving of the driver of the auto. The Tribunal awarded an amount of Rs.35,000/- towards compensation, under various heads.

7. In this appeal, the insurance company is not disputing the quantum of compensation granted by the Tribunal under various heads. The only ground raised in this appeal is that the seating capacity of the auto, which is involved in the accident, is three persons plus driver, but as per Exs.A-1 and A-2, which are copies of FIR and charge sheet, at the time of accident, ten persons were traveling, therefore, allowing more number of passengers, amounts to violation of policy condition and hence the insurance company is not liable to pay any compensation.

8. The Tribunal considering the evidence of P.W.1 coupled with Exs.A-1 and A-2 and also taking into consideration, the above contention of the insurance company; recorded finding of fact that accident due to rash and negligent driving of the driver of the auto.

9. As per Exs.A-1 and A-2, ten persons were traveling in the auto at the time of accident, and the seating capacity of auto, as already noted above, is three persons, plus driver. Allowing ten persons to travel in the vehicle, in excess of its seating capacity, amounts to violation of policy conditions, by the insured. But the claimant is the third party and he cannot be made to suffer for violation of policy conditions by the insured. The insurer has to first indemnity and then recover the same from the insured. The Apex Court in *S.Iyyappan v. M/s. United India Insurance*[1] considering the violation of policy conditions by the insured in allowing the vehicle to be driven by a person not holding valid driving licence, held that the statutory right of a third party to recover the amount of compensation awarded from the insurer cannot be denied and if there are any violation of conditions of policy, insurer has to proceed against the insured for recovery of the amount. The relevant portion is thus:

> "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."*

[1] [(2013) 7 SCC 62]

10. In the instant case, the Tribunal held that the insurer is liable to pay the compensation and is entitled to recover the same from the insured, in execution proceedings due to violation of policy conditions.

11. Hence, this court finds that there is no ground to interfere with the award of the Tribunal and the appeal is accordingly dismissed.

12. Miscellaneous petitions pending, if any, shall stand closed. No costs.

M.GANGA RAO,J

DATE:24—08—2018

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