THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

C.M.A.No.3943 of 2004

JUDGMENT:

Aggrieved by the grant of compensation of Rs.20,000/- as against a claim of Rs.60,000/- by the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, Karimangar, ('the Tribunal' for brevity), vide order, dated 07.07.2004, passed in O.P.No.594 of 2001, the claimant preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity) seeking enhancement of compensation.

2. Heard the learned counsel for the appellant-claimant, learned Standing Counsel for the Oriental Insurance Company Limited representing the 3rd respondent and perused the record.

3. The learned counsel for the appellant-claimant would contend that the crime vehicle bearing registration No.MP-04-K-2544 had been insured with respondent No.3-Oriental Insurance Company Limited. There are details of cover note in Ex.A.4-Certified Copy of Form No.54. Placing reliance on a decision of the Apex Court in National Insurance Company Limited Vs. Abhaysing Pratapsing Waghela and others[1], wherein, it was held that "*if a cover note had been issued which in terms of clause (b) of sub-section (1) of Section 145 of the Act would come within the purview of definition of certificate of insurance; it would also come within the purview of definition of insurance policy. If a cover note is issued, it remains valid till it is*

[1] (2008) 9 SCC 133

cancelled", learned counsel for the appellant-claimant contended that the Court below, without adverting to the legal and factual aspects, dismissed the claim against the respondent No.3-Oriental Insurance Company Limited erroneously and ultimately prayed to enhance the compensation as prayed for.

4. On the other hand, the learned Standing Counsel for the Oriental Insurance Company Limited representing the 3rd respondent would submit that in Ex.A.4-Certified Copy of Form No.54, there are no details of the branch and the address of the insurance company with which the offending vehicle bearing registration No.MP-04-K-2544 was insured. No insurance policy was issued in respect of the offending vehicle bearing registration No.MP-04-K-2544. There is also evidence of R.W.1 to the effect that the offending vehicle bearing registration No.MP-04-K-2544 was not insured with respondent No.3-Oriental Insurance Company Limited. The Tribunal, after analysing the entire evidence on record, rightly dismissed the claim against respondent No.3. There are no circumstances to interfere with the impugned order and ultimately prayed to dismiss the appeal.

5. In view of the rival contentions, the point that arises for determination in this appeal is whether the offending vehicle bearing registration No.MP-04-K-2544 is insured with respondent No.3-Oriental Insurance Company Limited.

6. To substantiate the submissions made on behalf of the appellant-claimant, Ex.A.4-Certified copy of Form No.54 is marked, wherein, in the column relating to the insurance of

vehicle, it is mentioned as ‘No.MP.704273/2001 valid up to 14.01.2001’. There is evidence of R.W.1 to the effect that the offending vehicle bearing registration No.MP-04-K-2544 was not insured with the 3rd respondent-the Oriental Insurance Company Limited. In the course of adducing evidence before the Tribunal, the appellant-claimant did not make efforts to serve notice duly on the other side and got marked the copy of insurance policy of the offending vehicle. The Tribunal held that there was no insurance of the offending vehicle as on the date of the occurrence of the accident. Under Ex.A.4-certified copy of Form No.54, the name of the insurance company is mentioned as ‘Oriental Insurance Company Limited’. There were no details of the branch office of the insurance company and the number given in Form No.54 is 704273/2001 valid upto 14.01.2001. R.W.1-employee of the 3rd respondent-insurer did not admit the said No.704273/2001 and stated that it dos not belong to his insurance company. His specific evidence is that there was no insurance of the offending vehicle with the 3rd respondent-insurance company. Under these circumstances, it cannot be held that the number furnished in Form-54 was assigned by the 3rd respondent-insurance company and there was valid insurance coverage up to 14.01.2001 of the offending vehicle. The decision relied on by the learned counsel for the appellant-claimant has no application to the instant case. The finding of the Tribunal is based on record. The Tribunal rightly dismissed the claim against the 3rd respondent-insurer. There is nothing to take a different view.

7. As far as the assessment and grant of compensation against the driver and owner of the offending vehicle is concerned, it is based on the nature of injuries and the treatment undergone by the appellant-claimant. There are no circumstances to enhance the same. On both counts, the appeal fails and it is liable to be dismissed.

8. In the result, the appeal is dismissed. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

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Dr. SHAMEEM AKTHER, J

12th June, 2018
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