HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.615 OF 2018

JUDGMENT:

The present Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, is preferred by the appellant - HDFC ERGO General Insurance Company Limited, questioning the judgment and decree dated 09.10.2017 in M.V.O.P. No.1126 of 2015 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge, Guntur.

2. The Tribunal by its order dated 09.10.2017, for the grievous injuries sustained by respondent No.1 - claimant, based on discharge summary issued by the Government General Hospital, Guntur, assessing the partial permanent disability on account of mal-union of fracture, granted a sum of Rs.72,000/- towards compensation making respondent Nos.1, 3, 4 and 5 jointly and severally liable to pay the said amount with certain directions mentioned in the decree.

3. The injury sustained by the claimant was to the right lower limb and the disability arrived at by the medical officers based on a mild restriction of right knee and right ankle joint. However, the Tribunal did not accept 20% disability and treated it as temporary disability only by assigning reasons. The Tribunal has awarded interest at 7.5% per annum.

4. Sri A. Ramakrishna Reddy, learned standing counsel for the insurer, would mainly contend that driver of the accident vehicle did not hold valid driving licence to drive the type of vehicle and he possess different type of licence. He would submit that the driver was authorised to drive Light Motor Vehicle non-transport, but, he was driving the transport vehicle at the relevant time, and, therefore, there has been violation of conditions of the policy and it cannot be said that he was holding effective and valid driving licence to drive the type of vehicle mentioned in the licence. However, the learned standing counsel would fairly concede that the Hon'ble Supreme Court in **S. Iyyapan v. United India Insurance Company Limited**[1]**,** held that initial liability can be fixed on insurance company and to order for recovery of the compensation amount paid from the owner of the vehicle. So long as the law laid down by the Hon'ble Supreme Court in the said decision holds the field, the sole ground agitated by the insurer in attacking the order and decree under challenge cannot be sustained, but, however, order and decree require modification. Hence, the appellant - insurer is directed to initially pay the compensation awarded by the Tribunal and recover the same from the owner of the vehicle.

5. Accordingly, the Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

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[1](2013) 7 SCC 62

As a sequel thereto, Miscellaneous Applications, if any, pending in the present Civil Miscellaneous Appeal stand dismissed.

A. SHANKAR NARAYANA, J

April 16, 2018.
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