HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.701 of 2006

JUDGMENT:

This appeal is filed by the insurance company, 2nd respondent in OP No.777 of 2004 filed by the claimant-2nd respondent herein seeking compensation of Rs.1,00,000/- on account of the injuries sustained by her in motor vehicle accident involving a jeep bearing registration no.AP 15G 654. By the impugned order, the Motor Accidents Claims Tribunal, Hyderabad, as against the claim of Rs.1,00,000/- awarded a sum of Rs.47,000/- towards compensation with interest at 9% per annum from the date of filing of the petition till the date of deposit of the amounts in the Court.

2. Facts stated are:-on 28/29-04-2000, at about 2-30 am, the claimant-2nd respondent herein along with other family members was proceeding in the offending vehicle (jeep bearing registration no.AP 15G 654) from Sultanabad to Peddapalli and when the jeep reached outskirts of Chinna Kalvala village, driven in a rash and negligent manner by its driver, dashed the Tractor bearing registration no.AP 15T 5446/47 which was coming in the

opposite direction and due to the said accident and impact, the claimant and others sustained multiple injuries and a case in Cr.No.64/2000 for the offence under Section 337 IPC was registered against the driver of the jeep.

3. As regards the culpability in causing the accident, the Tribunal considering the evidence adduced and in the absence of rebuttal evidence, held that the accident occurred on account of the rash and negligent driving of the offending jeep in question by its driver and in the facts and circumstances of the case, the said finding does not warrant any interference.

4. The appellant-insurance company filed this appeal only on the ground of its liability to pay the compensation. Learned counsel for the appellant insurance company states that Ex.B3, policy of the offending vehicle is an act policy and it does not cover the risk of the passengers in the vehicle, as no extra premium was paid and, therefore, the insurance company cannot be fastened to pay the compensation to the claimant. It is also stated by him that though the insurance policy is taken under private car

policy, the offending jeep was put to use for commercial purpose by taking the passengers in the jeep to marriage party.

5. Though served none appeared for the claimant-2nd respondent. None appears for the 1st respondent owner of the offending jeep.

6. The date and the nature of the accident, the claimant sustaining injuries on account of the accident are not in dispute. A perusal of Ex.B-3, insurance policy which is in respect of the offending jeep, it is clear that it is an act policy and it only covers third party risk coverage and not the risk coverage of the persons travelling in vehicle. It has come in the evidence of the claimant examined as PW1 that the jeep was hired, which is against the policy conditions. The decision cited by the learned counsel for the appellant in ***BRANCH MANAGER, UNITED INDIA INSURANCE CO. LTD. Vs. KONDAKOTAL SAROJA (2008 (5) ALT 246 (DB)*** also laid down the proposition that the vehicle covered by only act policy and hired against the policy conditions, the insurance company cannot be made liable to pay the

compensation. Therefore, the impugned award directing appellant-insurance company and the owner of the jeep-1st respondent herein to pay the compensation jointly and severally is erroneous and the award is modified fixing the liability to pay to the compensation on the 1st respondent-owner of the jeep in question alone. It is open for the 2nd respondent-claimant to recover the amount already paid to the claimant from the 1st respondent-owner of the jeep.

7. In the result, the appeal is allowed in part and the impugned award in OP No.777 of 2004 is modified to the extend indicated above. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. No order as to costs.

A.RAJASHEKER REDDY, J

Dated: 22-02-2018.
NRG

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.701 OF 2006

Date: 22-02-2018

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