THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1846 OF 2006

JUDGMENT:

This appeal is filed by the appellant-Insurance Company under Section 173 of the M.V. Act, aggrieved by the order, dated 22.04.2006 in O.P. No.297 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-V Additional District Judge (FTC), Anantapur, wherein compensation of Rs.1,33,000/- was granted to the respondent-claimant against the appellant-insurance company and respondent No.2-owner of the offending vehicle.

2. Heard both sides and perused the record.

3. Learned standing counsel for the appellant-Insurance Company did not contest the award of compensation of Rs.1,33,000/- in favour of the respondent/claimant whose leg was amputated in the motor vehicle accident. He only contends that driver of the offending lorry was not possessing a valid driving license, which amounts to violation of policy conditions, and therefore it is not appropriate to tag liability on the insurance company, and ultimately, prayed to set aside the impugned order as against the appellant-insurance company.

4. On the other hand, the learned counsel for the respondent/claimant would contend that the Tribunal had taken all the factors into consideration and granted just and reasonable compensation; that there is no infirmity in the impugned order and the Tribunal rightly tagged liability against the insurance company. There are no

circumstances to interfere with the same and ultimately prayed to dismiss the appeal.

5. In view of the rival submissions, the only point that arises for consideration is whether the direction given by the Tribunal to pay the compensation awarded jointly and severally is tenable ?

6. The respondent/claimant sustaining injuries in the subject accident occurred on 6.5.2002 due to rash and negligent driving of the driver of lorry bearing No.AP09T 2888, is not in dispute. The only dispute is with regard to tagging liability on the appellant/insurance company. On the aspect of liability of the appellant brought to the notice of this court that the Tribunal had discussed the decision in *National Insurance Company Limited v. Challa Bharathamma* (2004 ACJ 2094) wherein the Apex Court held that when there is violation of permit conditions, etc., the insurance company can be directed to deposit the compensation awarded and recover the same from the owner of the offending vehicle. The appellant/insurance company examined its employee K.Chandramouli as R.W.1 and also R.W.2-C.Hassan Ali Khan, and got marked Ex.B1-insurance policy and Ex.B2-driving license extract of Thimmanna, who was driving the offending lorry at the time of the accident. The Tribunal also relied on the said evidence and recording a finding that the driver of the offending lorry was possessing driving license to drive a light motor vehicle at the time of the accident. As seen from the record, the offending lorry is a heavy vehicle. Therefore, there is violation of the conditions of the policy of insurance with regard to possession of valid driving license by the driver of the vehicle. In the abovementioned decision, it is held that in view of the violation of the

conditions of the policy, the insurer can be ordered to pay the compensation awarded and recover the same from the owner of the offending vehicle. The Tribunal has not passed such a direction. Therefore, in the facts and circumstances of the case, the appellant/insurance company is directed to deposit the entire compensation awarded with interest and costs within two months from today (if not already deposited), and recover the same from the owner of the offending vehicle. On such deposit, the respondent/claimant is entitled to withdraw the same.

7. With this direction, the appeal is disposed of. No order as to costs of the appeal.

Miscellaneous petitions, if any pending in this appeal shall stand closed.

DR.SHAMEEM AKTHER, J

12.06.2018
DRK

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1846 OF 2006

12.6.2018

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