THE HON'BLE MS.JUSTICE J.UMA DEVI

M.A.C.M.A.NO.1091 OF 2005

JUDGMENT:

Having been aggrieved by the order, dated 28.06.2004 passed in O.P.No.1396 of 1999 by the Chairman, Motor Accident Claims Tribunal-cum-II Addl. District Judge, R.R. District, granting compensation of Rs.1,00,000/- to the 1st respondent-claimant regarding damage caused to his house in the accident, dated 05.04.1999, the present appeal is filed by the United India Insurance Company Ltd., represented by its Branch Manager.

2. The 1st respondent-Sri T.Krishna Kumar, s/o Trinadha Rao, laid the claim against the owner and insurer of the lorry bearing No. AP 9T 2345, alleging that due to negligent driving of the afore mentioned lorry by its driver, the house bearing No.309, Allwyn colony, Miyapur, was damaged partially and the roof of the house was broken. Due to the damage caused to the house by the lorry which rammed into the house on account of negligent driving of it by its driver, the house became unfit for residential purpose. It was further contended by the 1st respondent that he purchased the said house from the Society of Allwyn Colony Employees for a total consideration of Rs.2,50,000/- and carried on wood work by incurring expenditure of Rs.50,000/-. By the date of afore mentioned accident, the

house was in occupation of tenant and that the pregnant daughter of the tenant also received injuries when the lorry rammed into the house. He claimed compensation of Rs.2,09,000/- in all towards damage caused to the house and towards the loss of rent etc.,

3. The case was not contested by the driver and owner of the lorry and that the present appellant with whom the offending lorry was insured, alone contested the case by filing an elaborate counter, wherein it had put the claimant to prove the alleged accident and the damage caused to his house bearing No.309, Allwyn Colony, Miyapur. It also had taken the plea that the claimant without establishing that a sum of Rs.2,00,000/- is being required to get his damaged house repaired, is not entitled to get any amount from it towards compensation.

4. The 1st respondent-claimant in proof of his contention that his house bearing No.309, Allwyn Colony, Miyapur, was damaged as the lorry belonging to the respondent Nos. 2 and 3 rammed into the house due to the negligent driving of it by its driver, got examined him as P.W.1. He also relied on Exs.A1 to A5, which were the certified copy of registration sale deed, dated 07.04.1992, certified copy of FIR in Cr.No.266 of 1999 of Kukatpally P.S., certified copy of charge sheet, valuation certificate of

building and two positive photos, showing the damaged condition of the house etc.,

5. The learned trial Judge on close scrutiny of the evidence of P.W.1 and the documents produced by him, came to the conclusion that accident occurred due to negligent driving of the lorry bearing No. AP 9T 2345 by its driver. Admittedly, no steps were taken by the appellant to examine the driver of the lorry against whom negligence was attributed. As no evidence was available disproving the testimony of P.W.1, whose evidence was supported in all aspects by Exs.A1 to A5, the Court below had rightly came to the opinion that the accident dated 05.04.1999, which resulted damage to the house of the claimant occurred due to negligent driving of the lorry bearing No. AP 9T 2345 by its driver.

6. Coming to the liability of the Insurance Company, which was disputed by it is concerned, the Insurance Company, admittedly did not take the stand that the policy issued in respect of the offending lorry bearing No. AP 9T 2345 was not in force by the date of the accident. The Court below appeared to have taken note of contents of Ex.B1-policy,wherein it was recited that insurance for the crime lorry was in force w.e.f. 13.03.1992 to 12.03.2000 came to the opinion that the offending lorry was having valid and

subsisting insurance policy by the date of the accident. Though it was contended by R.W.1 during the course of his examination that the liability of the Insurance Company cannot be fixed beyond Rs.6,000/- and the liability is to be restricted to Rs.6,000/- only, he has failed to explain as to how the liability of the Insurance Company is to be restricted to Rs.6,000/-.

7. It appears in the counter, the Insurance Company has not taken the plea that its liability is to be restricted to Rs.6,000/- and the basis for limiting its liability to Rs.6,000/-. In the absence of specific plea of defence in this regard in counter filed by it and the failure on the part of R.W.1 to explain how the liability of the Insurance Company is to be restricted up to Rs.6,0000/-, the contention whatsoever raised by the Insurance Company in this regard for the first time during the course of trial, has not been taken into consideration rightly by the Court below. During the course of hearing of the appeal also, it has not been explained satisfactorily by the Insurance Company as to how its liability is to be restricted to Rs.6,000/-. Therefore, I am totally in agreement with the findings recorded by the Court below in this regard.

8. The learned trial Judge on perusal of positive photos showing the damaged condition of the house

belonging to the claimant and other supporting material produced by him, awarded compensation of Rs.1,00,000/- regarding the damage caused to the house by the lorry, which rammed into the house due to the negligent driving of the said lorry by its driver.

9. For the reasons recorded above, the award passed by the trial Judge granting compensation of Rs.1,00,000/- to the claimant needs no intervention, therefore, the same is hereby confirmed.

10. The appeal filed by the Insurance Company fails for the reasons stated above and the same is hereby dismissed accordingly without costs.

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

J.UMA DEVI, J

DATED: 23-07-2018.
Hsd