THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.3566 of 2005

JUDGMENT:

This appeal is preferred by the appellant/insurer questioning the order of the Motor Accident Claims Tribunal-cum-III Additional District and Sessions Judge (FTC), Gadwal (for short, the Tribunal) in O.P.No.228 of 2000 dated 16-12-2004.

2. Brief facts of the case are that on 14-11-1999 while the claimant was boarding a lorry bearing No.AP J 5151 at Simla Dhaba hotel in Palem village on N.H-7 to go to his village Perur, the driver of the said lorry moved the vehicle in a rash and negligent manner without waiting for him to get into the lorry, as a result of which, he slipped and fell down and the front tyre of the lorry has passed over the right thigh of the claimant. Hence, he filed a claim petition claiming compensation of Rs.50,000/- against the respondents who are the owner and insurer of the crime vehicle, for the injuries sustained by him, by contending that he is hale and healthy, working as a labour and earning Rs.3,000/- per month.

3. In the claim petition, the appellant-insurer filed a counter denying the allegations and contended that the amount claimed by the claimants is highly excessive and that it is not liable to pay any compensation and therefore prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the bus and awarded total

compensation of Rs.30,000/- under various heads, with interest at the rate of 9% per annum. Aggrieved by the said order, the appellant/insurer filed the present appeal.

5. Heard.

6. The only contention of the learned Sanding Counsel for the appellant-insurer is that the claimant, as an unauthorized passenger, tried to board the goods vehicle while it was moving and thus he fell down and sustained injuries and therefore the question of pay and recovery does not arise and that the insurer cannot be liable to pay the compensation as such act of the claimant is not permissible and therefore the claim cannot be accepted for violation of policy conditions.

7. Having regard to the facts and circumstances of the case, admittedly, the claimant fell down and he sustained injuries. He is neither the driver nor the owner of the vehicle. So he needs to be treated as a third party. But at the same time, when the vehicle itself is a goods vehicle and the claimant is not supposed to board the running goods vehicle, his act of getting over the goods lorry amounts to negligent act and thus, this Court holds that there is contributory negligence on the part of the claimant for 50% and equally 50% on the part of the driver of the crime vehicle. Hence, 50% is apportioned towards contributory negligence on the claimant and 50% on the owner of the vehicle.

8. During the course of arguments, learned counsel for the appellant-insurer categorically submits that after filing of the appeal, in pursuance of the order 29-09-2005 in MACMA MP No.4384 of 2005, 50%

of the decretal amount has been deposited and the same has been withdrawn by the claimant.

9. In view of the above, this Court holds that 50% part of the fastening of liability on the part of the insurance company/appellant is complied with and no further compensation needs to be paid by the insurer.

10. Accordingly, the appeal is allowed. No costs.

11. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

T.AMARNATH GOUD, J

Date: 30-08-2019
kvr