THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

I.A.No.1 of 2019
AND
MACMA NO. 2334 of 2018

COMMON JUDGMENT:

I.A.No.1 of 2019 is filed by the claimant to vacate the interim stay granted on 27.08.2018 and permit them to withdraw the deposited amount. At the stage of hearing the vacate stay petition, both sides requested the Court to pass orders in the appeal itself and hence, the matter is taken up for hearing finally.

It is the case of injuries. The claim made under Section 166(1)(A) of the Motor Vehicle Act, 1988 read with Rule 455 of the A.P. Motor Vehicle Rules, 1989 claiming compensation of Rs.1,50,000/- by the claimant, who is owner-cum-driver of the auto bearing No. AP 25W 5883 for the injuries sustained in the accident occurred on 31.05.2012, the tribunal awarded compensation of Rs.76,027/- with interest @ 9% per annum from the date of petition payable by the Insurance Company. Aggrieved, thereby, the present appeal is filed by the Insurance Company on the ground that the insured, who is owner-cum-driver of the vehicle cannot claim any compensation against his insurer and more so an extra premium was paid to cover the personal accident risk, the claim under the Motor Vehicle Act before the Tribunal is not maintainable, but he has to proceed before the Consumer Form or Civil Court relying on judgment of the Division Bench of this Court in **M/s New India Assurance Company Limited v Karri Chinnammalu**[1].

Learned counsel for the claimant contended that the order passed by the tribunal is well considered and needs no interference of this Court and relied on judgment of the High Court of Judicature at Gauhati, Shillong Bench in **Oriental Insurance Company Limited v A.J.Thomas**[2]**,** which was already discussed by the tribunal that in view of additional premium paid by the insured, the insurer has to pay the compensation.

Having regard to the facts and circumstances of the case and on perusal of the judgment of the Division Bench of this Court in **Karri Chinnamalu** referred supra that even otherwise when the claimant is not a third party, but owner of the vehicle, the claim before the tribunal is not maintainable, but for the remedy as suggested to him by the insurer, subject to the policy risk coverage should approach the Consumer Forum or Civil Court and the law is also well settled by the expressions of the Apex Court for such remedy, the claimant has to approach Consumer Forum as an alternative remedy available and that since the claim is under Section 166 of the M.V. Act where rash and negligence needs to be established and that the accident occurred in the present case is due to rash and negligent driving of the driver of the auto i.e. owner-cum-driver and being insured, he cannot be treated as third party. Therefore, the appeal is liable to be allowed and that the

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[1] Laws (APH) 2014 1 66
[2] 2011 ACJ 428

claim petition is liable to be returned to file before appropriate form.

In view of the above, the appeal is allowed setting aside the award and decree dated 11.12.2017 passed in O.P.No.339 of 2017 by the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-Principal District and Sessions Judge, Adilabad directing the tribunal to return the claim petition to present either in Consumer Forum or in Civil Court with any prescribed format duly filled enclosing to it with claim of protection under Section 14 of the Indian Limitation Act. The tribunal also if any application is filed by the claimant, pass order and issue certificate to the claim for refund of the Court Fee paid under Section 66 of the A.P. Court Fee Act, 1956 read with Rule 475 of A.P. Motor Vehicle Rules, 1989. Accordingly, I.A.No.1 of 2019 is closed. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

T.AMARNATH GOUD,J

Date: 28.11.2019
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