THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO. 2727 OF 2016

JUDGMENT:

This appeal is directed by the insurance company against the order and decree dated 01.04.2016 passed by the Motor Accidents Claimants Tribunal-cum-V Additional District Judge, Karimnagar (for short 'the Tribunal), in M.V.O.P.No.346 of 2014, whereby the tribunal granted compensation of Rs.2,97,888/- in a motor vehicle accident that occurred on 14.11.2012 while the petitioner was proceeding to Arepally Village from Mundrai Village on his motor cycle bearing No. AP 15 AP 7627, on the way at about 7.00 pm, when he reached at Palamakula Village outskirts, one JCB bearing No. AP 28 BQ 0348 driven by its driver in rash and negligent manner with high speed, dashed the motor cycle of the petitioner from opposite direction, due to which the petitioner received grievous injuries on his head and neck, as against the claim of Rs.3,00,000/-.

2. For the sake of convenience, the parties herein are referred to as arrayed in the tribunal.

3. Respondent No.2 remained exparte. Respondents 1 and 2 filed their counters denying the claim petition.

4. In order to prove the case of the claimant, PWs.1 and 2 were examined and marked Exs.A1 to A.10 and RW.1 was examined on behalf of the respondents and marked Ex.B.1 attested copy of policy.

5. Basing on the material available on record, the tribunal held that the accident occurred due to rash and negligent driving of the driver of the vehicle and that during validity period of policy and that granted compensation as stated.

6. Heard learned counsel for the insurance company and the claimant.

7. Learned standing counsel for the insurance company submitted that the vehicle involved in the accident is not a motor vehicle and that the insurance policy is a contractors plan and machinery policy and that the said policy covered within the location of operation at 'water front city, Survey No.59, Muraharpally Village, Medchal Mandal, R.R. District, Hyderabad, Anantagiri and placed copy of policy bearing No.2224 2002 5945 4600 000, which shows that the same is valid from 11.04.2012 to 11.04.2013. Learned counsel also relied on judgment of the Karnataka High Court in **Tara Chanda and Sons v Oriental Insurance Co.Ltd and others**[1]. Learned counsel further submitted that the policy is a third

[1] 2017 ACJ 1945

party policy, premium paid was Rs.10,435/-, which was insured for a sum of Rs.1,95,000/- only and hence, prayed to restrict its claim to that amount.

8. Learned counsel for the claimant submitted that the order passed by the tribunal is well considered and that the claimant may be permitted to withdraw the compensation amount.

9. There is no dispute with regard to the manner of accident and involvement of the vehicle. The order passed by the tribunal is well considered and needs no interference. A perusal of the copy of policy, it is a third party policy, premium of Rs.10,435/- was paid and insured for Rs.1,95,000/- only. In view of following the judgment of the Karnataka High Court and perusal of the copy of policy, payment of compensation amount by the insurance company is restricted to Rs.1,95,000/-, which is insured amount and hence, the order of the tribunal needs modification.

10. Accordingly, MACMA is partly allowed modifying the order and decree dated 01.04.2016 passed by the Motor Accidents Claimants Tribunal-cum-V Additional District Judge, Karimnagar that the insurance company/appellant is liable to pay Rs.1,95,000/- only out of the compensation amount of Rs.2,97,888/- with interest @ 7.5% per annum

from the date of petition till the date of realization. However, the claimant is at liberty to recover the balance compensation amount from the owner of the offending vehicle. It is made clear that the amounts, if any, deposited by the insurance company needs to be adjusted. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

T.AMARNATH GOUD,J

Date: 01-10-2019
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