HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.860 of 2005

J U D G M E N T:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 21.03.2005, passed by the Chairman, Motor Vehicle Claims Tribunal-cum-District Judge, Adilabad, in O.P.No.339 of 2002, granting compensation of Rs.3,26,000/- against respondent No.1 alone.

2. The appellants filed the above O.P under Sections 166 & 163-A of the Act, claiming compensation of Rs.3,00,000/- on account of the death of one Ganesh (hereinafter referred to as 'the deceased') in a motor vehicle accident.

3. The brief averments made in the petition are that the deceased was aged about 21 years, working as an Auto driver and earning Rs.3,000/- per month. On 20.10.2001 at about 4:15 a.m, when the deceased along with others were proceeding in Tata Sumo Bearing No.AP.25E.4444 from Mancherial to Hyderabad and by the time when it reached the outskirts of Gouraram village, as the vehicle was driven at high speed and in rash and negligent manner, it dashed a stationed lorry bearing No.AP.11U.1008 from behind. Due to the accident, the deceased and two others died on the spot. A case under Sections 304-A & 337 I.P.C was registered against the driver of the Tata Sumo Bearing No.AP.25E.4444. Due to the untimely death of the deceased, the petitioners, who are the wife, son and parents of the deceased, lost their only source of income and they suffered pain and mental agony, therefore prayed the Court to grant compensation of Rs.3,00,000/- against respondent Nos.1 & 2.

4. Before the Tribunal, first respondent remained *ex parte.*

5. The brief averments made in the counter filed by the second

respondent are as follows:

The second respondent put the appellants to prove the manner of accident, age and income of the deceased and specifically stated that the deceased was travelling as a passenger unauthorisedly; that the vehicle was carrying passengers more than the permit capacity and thus, violated the permit conditions as well as policy conditions; and that there is involvement of two vehicles in the accident, therefore the owner and insurer of the another vehicle i.e., lorry bearing No.AP.11U.1008 are also necessary parties, thus the petition is bad for non-joinder of necessary parties. It is also specifically stated that the deceased was an unauthorised passenger and therefore, the Insurance Company is not liable to pay compensation and finally prayed the Court to dismiss the petition.

6. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the appellants got examined PWs.1 & 2 and got marked Exs.A1 to A6 on their behalf. On behalf of the contesting respondent Ex.B1 Insurance Certificate got marked.

7. The Tribunal having considered the oral and documentary evidence on record, held that the accident occurred due to rash and negligent driving of the driver of the Tata Sumo Bearing No.AP.25E.4444 and awarded compensation of Rs.3,26,000/- (against the claim of Rs.3,00,000/-) along with interest at 9% p.a payable by the first respondent alone. Being not satisfied with the award passed by the Tribunal, the appellants preferred the present appeal seeking to fix the liability against the second respondent also.

8. The learned counsel appearing for the appellants argued that when the passengers, who travelled in the same vehicle, filed the petitions for compensation in various Courts, those Courts allowed the petitions against the Insurance Company also on the ground that it is a comprehensive policy (B-type policy), which covers the risk of the

passengers; that the second respondent-Insurance Company has not proved that the petitioners paid fair to the owner of the vehicle, therefore prayed the Court to fix the liability against the Insurance Company also.

9. Though notice was served on respondent No.1, none appeared to argue on his behalf.

10. On the other hand, the learned counsel appearing for the second respondent fairly conceded that similar M.A.C.M.A Nos.4327 of 2004 and 773, 2315 & 2316 of 2005 were dismissed by this Court.

11. Having regard to the submissions made by the learned counsel for both the parties, the only point which is to be decided in this appeal is whether the second respondent is liable to pay compensation to the petitioners?

12. **P O I N T:** A perusal of the evidence available on record shows that there is no dispute of the fact that the accident occurred due to rash and negligent driving of the driver of Tata Sumo bearing No.AP.25E.4444, due to which the deceased died. The Tribunal after considering the oral and documentary evidence granted just and reasonable compensation of Rs.3,26,000/- against respondent No.1 only though the petitioners had claimed Rs.3,00,000/- against both the respondents.

13. The main grievance of the learned counsel for the appellants/ petitioners is that the Tribunal has not fastened the liability against the second respondent on the ground that the deceased was an unauthorized passenger. The learned counsel has filed a copy of judgment passed by the II Additional District Judge, (Fast Track Court), Adilabad, in O.P.No.340 of 2002, wherein the Tribunal has fastened the liability against the Insurance Company also. A perusal of the copy of judgment clearly shows that the Insurance Company is liable to pay compensation to the petitioners. Further, a perusal of the evidence also clearly shows

that the respondent has not produced any evidence to show whether the petitioners had paid fare to the owner of Tata Sumo Bearing No.AP.25E.4444 while travelling from Mancherial to Hyderabad and the policy is a B-type policy, which covers the risk of the passengers. Admittedly, this Court dismissed M.A.C.M.A Nos.4327 of 2004 and 773, 2315 & 2316 of 2005 filed by the Insurance Company arising out of same accident, wherein it is held as follows:

> *"The binding nature of the circular instructions of the Insurance Regulatory and Development Authority received recognition from judicial precedents including from this Court and if so, irrespective of the capacity in which the injured and the deceased in the present case were travelling in the Tata Sumo vehicle/a private car, the insurance policy in question being a comprehensive policy, the occupants in the private car are entitled to be compensated for their risk. The challenge of the impugned awarded by the Insurer on this Court, therefore has to fail."*

Therefore, the Tribunal in this case erred in not fastening the liability of the Insurance Company. Considering the facts and circumstances of the case, I am of the view that the petitioners are entitled for compensation against both the respondents and that the respondents are jointly and severally liable to pay the same.

14. Accordingly, the appeal is allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 22.06.2015

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