

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.41 OF 2009

JUDGMENT:

The Bajaj Allianz General Insurance Company Limited, represented by its Branch Manager, Begumpet, Hyderabad, who is respondent No.2 in O.P. No.1296 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional Metropolitan Sessions Judge-cum-XXI Additional Chief Judge, Hyderabad (for short, 'the Tribunal'), preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved over the order dated 15.06.2007, whereby and whereunder, the Tribunal directed the insurer to make initial payment and recover the same from the owner of the accident vehicle.

2. By the aforesaid order, the Tribunal has granted a sum of Rs.2,55,000/- towards compensation, as against the claim of Rs.5,00,000/- laid under Section 163-A of the Act, for the death of one Mohd. Ameer Pasha (deceased) in a road accident.

3. The appellant herein, who is the insurer of the accident vehicle, is respondent No.2, while respondent Nos.1 to 5 herein, who are the parents, brothers and sister of the deceased, respectively, are the petitioners, and respondent No.6 herein, who is the owner of the accident vehicle, is respondent No.1 in the original petition.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

5. The fact-situation occurring in the instant case is not in dispute. The only dispute raised by the insurer is that the driver of the auto-rickshaw was holding licence to drive a non-transport vehicle, but not a transport vehicle and despite the evidence of R.Ws.1 and 2, amongst whom, R.W.2 is Additional Licensing Authority, Hyderabad, and affirming the same, the Tribunal has passed the order of initial payment and recover the same from the owner of the accident vehicle.

6. Heard Sri Meherchand Nori, learned Standing Counsel for the appellant-insurer, and Smt. Jaya Vindhya, learned counsel for respondent No.6. There is no representation on behalf of respondent Nos.1 to 5, though, entered appearance.

7. Perused the order under challenge and the evidence on record both, oral and documentary, let in by both sides, more particularly, the evidence of R.Ws.1 and 2. The evidence of R.W.2 shows that the driver of the auto-rickshaw possessed licence to drive a non-transport vehicle and also possessed licence to drive a two-wheeler, but does not hold licence to drive transport vehicle and, thus, he was not supposed to drive the auto at the relevant time.

8. No elaborate probe is required in view of the decision of the Hon'ble Supreme Court in **S.Iyyapan v. United India Insurance**

Company Limited and another¹, wherein a finding was given that when a person holding licence to drive a LMV non-transport vehicle drove a LMV transport vehicle, the insurer is liable to initially pay the amount of compensation and recover the same from the owner of the accident vehicle. In that view of the matter, there is absolutely no merit in the appeal.

9. Accordingly, the instant appeal is dismissed confirming the decree and order dated 15.06.2007 in O.P. No.1296 of 2006 passed by the Tribunal in all respects. There shall be no order as to costs.

10. As a sequel thereto, miscellaneous petitions, if any pending in the instant appeal, stand closed.

8th September, 2016

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A. SHANKAR NARAYANA, J

¹ (2013) 7 SCC 62