

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.548 OF 2009

JUDGMENT:

The Oriental Insurance Company Limited-respondent No.3 in O.P. No.435 of 1998 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Khammam (for short, 'the Tribunal'), aggrieved by the order and decree dated 13.06.2002, whereby and whereunder, the Tribunal granted Rs.1,00,000/- as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one Kallem Bhadramma in a road accident, preferred the instant appeal under Section 173 of the Act, mainly on the ground that the said Kallem Bhadramma was an unauthorized passenger allowed to travel on the vehicle contrary to the provisions of the Act and the conditions of the policy, which the Tribunal did not properly appreciate.

2. The appellant herein, who is the insurer of the accident vehicle, is respondent No.3, while respondent Nos.1 to 3 herein, who are the husband and daughters of said Kallem Bhadramma, are the petitioners, and respondent Nos.4 and 5 herein, who are driver and owner of the accident vehicle, are respondent Nos.1 and 2 in the original petition.

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

4. The fact-situation occurring in the instant appeal needs no advertence for the reason that the connected five appeals in C.M.A. Nos.2293 and 2348 of 2003 and C.M.A. Nos.843, 858 and 859 of 2004 were already disposed of by this Court by rendering a common judgment on 28.04.2009 holding thus:

"The ratio in **New India Assurance Company Limited v Asha Rani** [(2003) 2 SCC 223 = AIR 2003 SC 607 = 2002 AIR SCW 5259] was followed in **Oriental Insurance Co. Ltd. v Devireddy Konda Reddy** [(2003) 2 SCC 339], **National Insurance Co. Ltd. v Ajit Kumar** [(2003) 9 SCC 668 = AIR 2003 SC 3093], **National Insurance Co. Ltd. v Bommithi Subbhayamma** [(2005) 12 SCC 243], **National Insurance Co. Ltd. v Prema Devi** [(2008) 5 SCC 403] and **New India Assurance Company Limited v Vedwati** [(2007) 9 SCC 486 = AIR 2007 SC 1334]. In all these judgments, it was held that an unauthorized/gratuitous passenger travelling in a goods carriage is not entitled to claim compensation from insurance company though such passenger or his/her dependants are entitled to recover compensation from owner of vehicle involved in the accident. Thus a gratuitous passenger travelling in a goods vehicle is not covered in insurance policy and a third party claim for the death/injury of such gratuitous passenger is not maintainable.

Following the dicta of the Supreme Court in **Asha Rani** (supra), these Civil Miscellaneous Appeals are allowed. However, compensation if any paid to claimants after passing

of impugned award or during pendency of appeals shall not be recovered from them. If so advised, appellant – insurer may recover the same from owner of offending vehicle as per the decision of the Supreme Court in **Oriental Insurance Company Limited v Nanjappan** [AIR 2004 SC 1630 = 2004 (2) ACJ 721]. No costs."

5. The said five appeals have arisen from the Original Petition Nos.430 of 1998, 426 of 1998, 428 of 1998, 427 of 1998 and 429 of 1998, which were disposed of along with O.P. No.435 of 1998 and that portion of the common order rendered by the Tribunal and the decree drawn in accordance with the said order are under challenge in the instant appeal.

6. Heard Sri N.S.Bhaskar Rao, learned Standing Counsel for the appellant-insurer, and Sri Karri Murali Krishna, learned counsel for respondent Nos.1 to 3 herein-petitioners, while the appeal against respondent Nos.4 and 5 was dismissed on 15.12.2008 for default.

7. In view of the common judgment rendered by this Court in the aforesaid batch of C.M.As., certainly, any amount of argument advanced by the learned counsel for the petitioners to view differently favouring the petitioners does not arise as a different view cannot be taken. The issue involved in the present appeal is squarely covered by the common judgment rendered by this Court in the aforesaid batch of appeals.

8. Therefore, the instant appeal is allowed in terms of the common judgment rendered by this Court in C.M.A. No.2293 of 2003 and batch dated 28.04.2009. The said common judgment shall form part of the record. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

17th August, 2016

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