

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1844 OF 2009

JUDGMENT:

Respondent No.3 - M/s. united India Insurance Company Limited preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved over the order and decree, dated 26-05-2008, in O.P. No.565 of 2007, on the file of the Chairman, Motor Accident Claims Tribunal - cum - District Judge, West Godavari District at Eluru (for short 'the Act'), whereby and where-under, an award of Rs.4,20,240/- was granted as compensation with interest at 7.5% per annum thereon as against the claim of Rs.8,00,000/- laid under Sections 163-A and 166 read with 140 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of Andhra Pradesh Motor Vehicle Rules, 1989, for the death of one Medapati Vera Reddy, husband of petitioner No.1 and father of petitioner No.2.

2. Respondent Nos.3 and 4 and the appellant herein, who are rider, owner and insurer of Yamaha RX 135 motorcycle bearing registration No.AP 05AC 5327 are respondent Nos.1 to 3, respectively, while respondent Nos.1 and 2 are the petitioners in the OP before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the OP.

4. The fact-situation occurring in the instant case is not in dispute except to the extent that a specific plea was taken by the Insurance Company that the driver of the accident vehicle was not holding a valid driving license to drive the motorcycle.

5. Before the Tribunal, PWs.1 and 2 were examined and Exs.A-1 to A6 were marked. On behalf of the Insurer, RWs.1 to 3 were examined, amongst whom, RW.2 is the Assistant Motor Vehicle' Inspector examined to prove that the rider of the motorcycle was holding only a light motor vehicles' license, but not the license for riding the two-wheeler. That has been the only controversy in the present appeal.

6. Heard Sri A.V.K.S. Prasad, learned standing counsel for the appellant - respondent No.3, and Sri K. Ramesh Babu, learned counsel for respondent Nos.1 and 2 - petitioners. It is endorsed in the cause title that respondent No.3 - respondent No.1 is not a necessary party. Respondent No.4 - respondent No.2, owner of the vehicle, was not served with notice.

7. During the course of arguments, the learned counsel for the appellant would fairly concede that the law laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Swaran Singh and Others**¹, holds the field as the driver of the two-wheeler was holding driving license to drive light motor vehicles, but the

¹. AIR 2004 SC 1531

description of the accident vehicle was only a two-wheeler and, therefore, to order initially to pay the amount and recover the same from the owner of the vehicle. To that extent, modification is sought during the course of arguments. The learned counsel for respondent Nos.1 and 2 would not object to it.

8. Therefore, the order and decree are modified directing the Insurance Company initially to deposit the amount and then recover the same from the owner of the accident vehicle. Except to the aforesaid modification, the order and decree passed by the Tribunal are maintained in all respects.

9. Accordingly, the appeal is allowed in part. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 23, 2016.

Mgr