

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 69 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 12.09.2005, in M.V.O.P. No.581 of 2002, on the file the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-VIII Additional District Judge (Fast Track Court) East Godavari District at Amalapuram (for short, 'the Tribunal').

2. Appellant herein is the 3rd respondent-insurance company, respondents 1 to 4 herein are the petitioners, and the 5th respondent herein is the driver and 6th respondent herein is the owner of the Lorry bearing No.AP09-V-6768.

3. For convenience sake, parties are referred to as the parties before the Tribunal in this judgment.

4. The petitioners filed a Petition before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (For short, 'the Act') claiming compensation of Rs.2,40,000/- for the death of one Kotamreddy Nagasrinivas (for short, 'the deceased'), in the motor vehicle accident occurred on 23.03.2002, who is the son of petitioners 1 and 2 and the brother of petitioners 3 and 4.

5. The Tribunal, on consideration of the evidence available on record, and the documents marked, awarded an amount of Rs.1,80,000/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till the date of realization, as against the original claim of Rs.2,40,000/-, making respondents 1

and 2 jointly and severally liable to pay the compensation. The Tribunal further directed the 3rd respondent-insurance company to deposit the said amount and recover the same from the 2nd respondent-owner of the crime vehicle by initiating execution proceedings without filing any separate suit.

6. The appellant-insurance company, being aggrieved by the quantum of compensation and also the direction to pay and recover the compensation amount from the 2nd respondent-owner of the crime vehicle, preferred the instant Appeal.

7. Heard Mrs. I. Maamu Vani, learned standing counsel for the appellant-insurance company, and S. Venkateswarlu, learned counsel for the petitioners. None appeared on behalf of the 5th respondent. The appeal against the 6th respondent-owner of the crime vehicle was dismissed for default *vide* order of this Court on 20.04.2016.

8. Learned counsel for the appellant submits that the appellant is not liable to reimburse the compensation amount and recover the same from the 2nd respondent-owner of the crime vehicle, as the deceased traveled in a goods vehicle as an unauthorized passenger, in view of the principle laid down by the Apex Court in *M/s. National Insurance Company Limited Vs. Baljit Kaur and others*¹, wherein it was held that the gratuitous passenger, who traveled in a goods vehicle, is not entitled to recover the compensation from the insurance company.

¹ MANU/SC/0009/2004

9. Learned counsel for the appellant further placed reliance on a decision of the Apex Court in *National Insurance Company Limited Vs. Prema Devi and others*², for the same proposition of law that gratuitous passenger is not entitled to claim compensation from the insurer, as there would be no coverage of risk for the gratuitous passenger, who travels in a goods vehicle.

10. Learned counsel further placed reliance on a decision of the Apex Court *National Insurance Company Limited Vs. Kaushalaya Devi and others*³. Learned counsel for the appellant submits that even in case of violation of terms and conditions of insurance policy by the owner of goods vehicle, the respondents-petitioners are not entitled for the relief of pay and recover and on these grounds sought for allowing the Appeal including relaxing the condition to the extent of directing the appellant-insurance company to pay and recover the compensation amount from the 2nd respondent-owner of the vehicle.

11. Mr. S. Venkateswarlu, learned counsel for the respondents-petitioners, contended that the Tribunal rightly appreciated the evidence on record and directed the appellant-insurance company to pay and recover the compensation awarded from the 2nd respondent-owner of the vehicle and the same needs no interference by this Court.

12. The short question that arises for consideration in this Appeal is whether the order passed by the Tribunal, directing the 3rd

² 2008 ACJ 1149

³ 2008 ACJ 2144

respondent-insurance company to deposit the compensation amount with accrued interest and thereafter to recover the same from the 2nd respondent-owner of the vehicle, by initiating execution proceedings without filing any suit, is in accordance with law? If not, liable to be set-aside?

13. POINT: In view of the facts and circumstances of the case and also in view of the aforesaid proposition of law laid down by the Apex Court, it is clear that the gratuitous passenger, who is traveling in a goods vehicle, is not entitled to claim compensation from the insurer and as such the insurance company cannot be compelled to be directed to pay first and recover the same from the insured *i.e.*, 2nd respondent-owner of the crime vehicle.

14. Learned counsel for the appellant-insurance company fairly conceded that if any amount is already deposited by it, and withdrawn by the petitioners-respondents, it would not seek any relief in respect of that amount. But insofar as the remaining amount, awarded by the Tribunal and not yet deposited, is concerned that condition may be relaxed by holding that the 2nd respondent-owner of the crime vehicle alone is liable for payment of the balance amount of compensation.

15. In view of the facts and circumstances of the case, and also in view of the law laid down by the Apex Court in the decisions referred above, the liability of the appellant-insurance company is exonerated from payment of the balance amount of compensation not yet deposited, holding that the 2nd respondent-

owner of the crime vehicle alone is liable to pay the remaining amount of compensation awarded by the Tribunal.

16. Accordingly, with the above direction, the Appeal is allowed in part.

17. As a sequel, miscellaneous petitions pending, if any, in this Appeal shall stand closed as infructuous. No order as to costs.

G. SHYAM PRASAD, J

Date: 31.01.2017.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD

19



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M.A.C.M.A. No. 69 OF 2006

Date.31.01.2017

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