

SMT JUSTICE T. RAJANI

MACMA.No.1075 of 2008

JUDGMENT:

This appeal is preferred by the claimant aggrieved by the judgment of Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Nalgonda, in M.V.O.P.No.1453 of 2000 dated 27.02.2004 on the grounds that the Court below dismissed the O.P. against the Respondent No.2-Insurer and that the Court did not award adequate compensation.

2. Heard counsel for the appellant and the counsel for the respondents.

3. In this case, the claimant was travelling as gratuitous passenger in the lorry. The contention of the counsel for the claimant that he was travelling as a labourer, was not accepted by the Court below. There is no absolutely no material to suggest that the petitioner was travelling as a labourer on the lorry, even for me to differ with the opinion arrived at by the lower Court.

5. Counsel for the appellant draws support for his contention that an order to pay amount and recover the same from the owner can be made against the insurance company from a ruling of the Apex Court in ***Manuara Khatun and***

others v. Rajesh Kr.Singh and others¹ wherein the Apex Court was dealing with a passenger who was considered a gratuitous passenger. As regards the liability of insurance company, it observed as under:

“The aforesaid question, in our opinion, remains no more *res integra*. As we notice, it was subject matter of several decisions of this Court rendered by three Judge Bench and two Judge Bench in past *viz.*, *National Insurance Co. Ltd. V. Baljit Kaur and others*, 2004 (1) ALD 98 (SC) =(2004) 2 SCC 1; *National Insurance Co. Ltd. V. Challa Upendra Rao and others*, (2004) 8 SCC 517; *National Insurance Co. Ltd. V. Kaushalaya Devi and others*, (2008) SCC 246; *National Insurance Co. Ltd. V. Roshan Lal*, Order dated 19.01.2007 in SLP © No.5699 of 2006 and *National Insurance Co. Ltd v. Parvathneni and another*, (2009) 8 SCC 785.

This question also fell for consideration recently in *Manager, National Insurance Company Limited v. Saju P. Paul and another* (supra), wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as “gratuitous passenger” and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of “*pay and recover*”.

6. Hence, going by the above ratio, an order against the insurer to pay the award amount and recover the same from the owner, can be made, without any demur.

¹ 2017 (2) ALD 65 (SC)

7. Respondent's counsel sought to place reliance on ***New India Assurance Co.Ltd v. Asha Rani and Others***². But the issues of pay and recover did not fall for consideration in ***Asha Rani's*** case. It was only on the issue of liability of insurer. ***Asha Rani's*** case does not come in the way of making an order of pay and recover.

8. Hence, it would be appropriate to modify the judgment of the lower Court by directing the insurer to first satisfy the award made by the lower Court and later to recover the same from the insured.

9. With regard to the contention of the claimant for enhancement of compensation, I do not find any reason to enhance the compensation which was awarded by the Court below, which is more than adequate, in the background of nature of injuries sustained by the claimant, since Ex.A4, Xerox copy of the injury certificate would show only one simple injury, which is in the form of sutured wound over the parietal region.

10. The Court below awarded an amount of Rs.25,000/-; which by all means, can be considered as more than adequate.

² 2003(2) SCC 223

11. Accordingly, the order of the Court below is modified to the extent indicated above and the rest of the order is left uninterfered with.

12. In the result, the Appeal is allowed in part. No order as to costs.

13. Pending miscellaneous petitions, if any, shall stand closed.

SMT. T. RAJANI, J

08.09.2017
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