HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.5325 OF 2008

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is filed by the appellants, petitioners in M.V.O.P. No.698 of 2000, laid under Section 166 of the Act read with Rule 455 of A.P. Motor Vehicles Rules, 1989, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge East Godavari at Rajahmundry (for short, 'the Tribunal'), aggrieved by the order dated 30.10.2004, whereby the Tribunal while granting compensation of Rs.5,60,000/- (*sic*), against the original claim of Rs.9,00,000/-, for the death of T.Atchibabu (Hereinafter referred to as 'the deceased'), who happened to be the husband of 1st petitioner, father of 2nd and 3rd petitioners and son of the 4th respondent, in a motor accident occurred on 11.07.2000, directed that the respondents 1 and 2 are jointly and severally liable to pay the same with interest at the rate of 7% p.a. from the date of petition till the date of deposit and dismissed the claim against the 3rd respondent.

2. Appellants herein are the petitioners; 1st respondent herein is the driver, 2nd respondent herein is the owner, and 3rd respondent herein is the insurer of Matador van bearing registration No.TN 37 H 3132 (For short, 'the crime vehicle').

3. Heard Sri N.Vijay, learned counsel for the appellants-petitioners, Sri K.Ashok Rama Rao, learned standing counsel for the 3rd respondent-insurer and perused the record. Respondents 1 and 2 are not necessary parties.

4. The case of the petitioners, in brief, is that on 11.07.2000, at about 09-00 p.m., when the deceased, who was working as Senior Lineman in B.S.N.L., along with other employees was returning by the crime vehicle to Kakinada, the crime vehicle, being driven by its driver in a rash and negligent manner, dashed a stationed lorry near Super Gas factory on ADB Road near Peddapuram and turned turtle resulting in the instantaneous death of the deceased including severe injuries to three other colleagues. Thereafter, a case in Crime No.109 of 2000 for the offences under Sections 304-A and 337 I.P.C. was registered against the 1st respondent by the S.H.O. Peddapuram Police Station. The petitioners, who are the husband and children, entirely dependant on the earnings of the deceased, suffered shock and mental agony due to his untimely death, claimed compensation of Rs.9,00,000/- against the respondents 1 to 3, being the driver, owner and insurer of the crime vehicle. Respondent No.4, mother of the deceased, got impleaded as necessary party *vide* order of the Tribunal in I.A. No.2080 of 2003 dated 02.04.2004.

5. Respondent Nos.1 and 2, driver and owner of the crime vehicle, and Respondent No.4, remained *ex parte* before the Tribunal.

6. Respondent No.3, insurer of the crime vehicle, filed counter and additional counter denying material allegations of the petition *inter-alia* contending that manner of the accident, age, occupation and earnings of the deceased be put to strict proof of the same. It was further contended in the additional counter that the crime vehicle is only a goods vehicle got insured with their Branch Office at Chennai covering the risk of third parties for the period from 03.08.1999 to 02.08.2000 and subsequently the 2nd respondent-owner changed the permit to carry 5 passengers in the vehicle without putting on information the 3rd respondent. So, the 3rd respondent is not liable to indemnify the 2nd respondent as there was no

contract of insurance between 2nd respondent and 3rd respondent and contended that the compensation claimed is excessive and exorbitant, sought for dismissal of the petition.

7. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 and 2, R.Ws.1 to 4 and the documents Exs.A.1 to A.5, Ex.B.1 and Exs.X.1 to X-8, awarded the compensation of Rs.5,60,000/- (*sic*) (*i.e.,* Rs.5,41,800/- towards loss of earnings, Rs.15,000/- to the 1st petitioner towards consortium, Rs.1,000/- towards transportation and Rs.3,200/- towards loss of love and affection) directed that the respondents 1 and 2 are jointly and severally liable to pay the same with interest at the rate of 7% p.a. from the date of petition till the date of deposit, dismissed the claim against the 3rd respondent.

8. Learned counsel for the appellants-petitioners would submit that the Tribunal failed to see that the crime vehicle involved in the accident is not a goods vehicle it is a passenger's vehicle. The principle that a gratuitous passenger travelling in the goods vehicle is not entitled to compensation from the insurer cannot be applied to the facts of the case on hand. There is no dispute from the 3rd respondent-insurer that the crime vehicle is not a passenger's vehicle and it is only a goods vehicle. The Tribunal failed to see the purport of '*any passenger*' used in Section 147 of the Act, which includes a passenger travelling in any vehicle. The Tribunal failed to observe that the ratio laid down by the Apex Court in ***New India Assurance Company Limited Vs. Asha Rani and others***[1] has no application to the case on hand. The crime vehicle involved in the accident is a Matador van *i.e.,* a passengers vehicle but not a goods vehicle. The Tribunal failed to see that the Motor Vehicles Act is a beneficial legislation and ought to have fastened the liability against the 3rd

[1] 2003 (2) SCC 223

respondent-insurer also. The main submission of the learned counsel for the appellants-petitioners is that the 3rd respondent-insurer is also liable to pay compensation to the petitioners.

9. On the other hand, learned standing counsel for the 3rd respondent-insurer would contend that though there is subsistence of a valid insurance policy, it relates to goods vehicle. Earlier the crime vehicle was a goods vehicle and the same was converted into a utility van. To cover the risk of passengers travelling by the crime vehicle, no insurance policy was obtained by the 2nd respondent-owner after conversion. The insurance policy of crime vehicle is only an act policy covering the goods vehicle. The Tribunal has analyzed the entire evidence on record relying on number of decisions and rightly concluded that the respondents 1 and 2, driver and owner of the crime vehicle, are liable to pay compensation to the petitioners and rightly dismissed the claim against the 3rd respondent-insurer.

10. The evidence of R.W.2 reveals that originally the crime vehicle was registered as a light motor goods vehicle. On 17.05.2000, the registration of the crime vehicle was changed from light motor goods vehicle to motor utility van to carry 5 persons. Ex.X-1 – copy of permit extract and Ex.X-2 copy of C-book extract reveals the same. Therefore, it is clear from the evidence on record that initially the crime vehicle was a goods vehicle. On 17.05.2000, it was converted to utility van permitting to carry 5 persons. Ex.B-1 is the copy of insurance policy of the crime vehicle wherein it is mentioned that the crime vehicle is a goods vehicle; premium was paid to cover the liability of public *i.e.,* to cover the risk of third parties.

11. The evidence of R.W.1, Assistant Administrative Officer, working in 3rd respondent-insurer office, Rajahmundry, reveals the terms and

conditions of the policy of the crime vehicle. As per which, the crime vehicle is a goods vehicle; there is no mention of change of insurance covering the risk of passengers travelling by the crime vehicle. Respondent No.2 having purchased the crime vehicle brought it to Rajahmundry got changed the permit from goods vehicle to utility van to carry 5 persons. Respondent Nos.1 and 2, driver and owner of the crime vehicle, failed to inform the conversion of crime vehicle from goods vehicle to utility van and 2nd respondent has not even paid any premium covering the risk of persons travelling by the crime vehicle. The 2nd respondent only entered into a contract of agreement with B.S.N.L. to provide the crime vehicle for use of its employees on certain terms and conditions. B.S.N.L. is not made a party to the petition before the Tribunal.

12. The Tribunal while relying on number of decisions, considering the facts and circumstances of the case held that the crime vehicle belonging to 2nd respondent is validly insured with the 3rd respondent-insurer only as a goods vehicle. Respondent No.2 changed the use of crime vehicle from goods vehicle to utility service van to carry 5 persons but he has not intimated the same to the 3rd respondent-insurer and obtained fresh policy of insurance to cover the risk of passengers being carried thereby. Ex.B-1 policy of insurance does not cover the risk of employees travelling in the crime vehicle. There is no contract of insurance between respondent Nos.2 and 3 to indemnify the respondent No.2 in case of any accident *etc.,* For absence of any contract of insurance between respondent Nos.2 and 3, 3rd respondent is not liable to pay any compensation to the petitioners, as insurer, and respondent Nos.1 and 2, being driver and owner of the crime vehicle, are alone jointly and severally liable to pay compensation to the petitioners. Admittedly, there is no policy of insurance covering the risk of passengers travelling by the crime vehicle as on the

date of accident. The concerned personnel of B.S.N.L. who entered into a contract of agreement with the 2nd respondent failed to very the records before hiring the crime vehicle for use of their employees. There are laches on their part also in not providing a vehicle having insurance to carry their employees. The persons who are travelling by the crime vehicle met with the accident are not gratuitous passengers. The facts of the case on hand are distinct from facts of the case in ***Asha Rani*** (1 supra). In the facts and circumstances of the case, as there is no contract of insurance between 2nd respondent and 3rd respondent-insurer to cover the risk of passengers travelling by the crime vehicle, no liability can be fastened against the 3rd respondent-insurer. The Tribunal has assigned valid reasons relying on number of decisions and rightly directed that the 1st and 2nd respondents are alone jointly and severally liable to pay the compensation. There is no infirmity in the impugned order and there is nothing to take a different view and tag the liability against the 3rd respondent-insurer. Hence, the Appeal is devoid of merits and is liable to be dismissed.

13. In the result, the Appeal is dismissed confirming the order dated 30.10.2004 passed in M.V.O.P. No.698 of 2000 by the Tribunal.

14. As a sequel, pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 04.10.2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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