HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A. C.M.A. No.2169 of 2006

JUDGMENT :

This memorandum of Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act by the claimant aggrieved by the award and decree, dated 8th March, 2006 in O.P.No.594 of 2004 on the file of the Motor Accident Claims Tribunal-cum-XIII Additional Chief Judge (Fast Track Court) City Civil Court at Hyderabad.

(2) The brief facts of the case are that while the appellant was proceeding from Hyderabad to Vemulawada in a DCM van bearing No.AP 9 U 5140 for a drama programme, when the van reached near Mulugu crossroads, one lorry bearing No.ABT 837 with load of coal came in a opposite direction at a high speed, driven in a rash and negligent manner, and dashed the DCM van. The driver of the DCM van and four others sustained grievous injuries and were shifted to Gandhi Hospital for treatment. The driver of the van succumbed to the injuries. The police registered a case against the driver of the lorry.

(3) The appellant has received injuries in the accident. The Tribunal, considering the evidence of P.W.1 – appellant, P.W.2 – Medical Officer and documents Exs.A1 to A16 and Ex.B1 - Insurance Policy, held that the driver of the lorry had driven the vehicle in a rash and negligent manner.

(4) The Tribunal, on consideration of the evidence, held that the accident occurred due to the rash and negligent driving of the driver of the lorry. The Tribunal has awarded compensation of Rs.28,462/- under various heads against respondent No.1 – owner of the vehicle and exonerated the liability of

respondent No.2 on the point that the petitioner travelled in the goods vehicle as gratuitous passenger, and dismissed the O.P.

(5) The learned counsel for the appellant mainly contended that in case of gratuitous passenger, the insurance company has to pay the amount to the claimant at the first instance, and then get reimbursed the same from the owner of the vehicle. In this regard reliance was placed on *Manager, National Insurance Co. Ltd. Vs. Saju P.Paul and another* [1] and submitted that, in a case where the liability of the insurance company is pleaded in respect of gratuitous passenger, the insurance company has to pay the compensation amount at the first instance and then recover the same from the owner of the vehicle. Therefore, it is contended that the appellant is entitled for a direction to the insurance company for payment of the amount and for reimbursement of the same by its owner. The learned counsel referred to para 26 of the said judgment which reads as follows :

> "26.The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in National Insurance Co. Ltd. v. Baljit Kaur {(2004) 2 SCC 1} and National Insurance Co. Ltd. v. Challa Upendra Rao {(2004) 8 SCC 517} should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The insurance company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1.8.2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent No.1) may be allowed to withdraw the amount deposited by the insurance company before this Court along with accrued interest. The insurance company (appellant) thereafter may recover the amount

[1] 2013(2) SCC 41

> so paid from the owner (Respondent No.2 herein). The recovery of the amount by the insurance company from the owner shall be made by Manager, following the procedure as laid down by this Court in the case of Challa Upendra Rao."

(6) Placing reliance on the above decision, the counsel for the appellant submits that pay and recovery can be ordered in this case.

(7) Learned counsel for the respondent submits that in *Saju P.Paul's case* (supra) the circumstances are different from the facts of the present case, as such, pay and recovery cannot be ordered.

(8) In fact, this is an appeal by the claimant filed being aggrieved by the dismissal of the O.P. on the point that the deceased was travelling as a gratuitous passenger in the crime vehicle, and there was no coverage of insurance. The Hon'ble Supreme Court in *Saju P.Paul' case* and also in a recent decision in Civil Appeal No.3047 of 2017 and 3065 of 2017, dated 21.2.2017, clearly held that the insurance company has to pay compensation amount at the first instance, and recover the same from the owner in case of gratuitous passenger.

(9) On consideration of the evidence on record, this Court is of the considered view that the insurer is liable to pay compensation of Rs.28,462/- under various heads and recover the same from the owner.

(10) In the result, the appeal is partly allowed directing the insurance company, the 2nd respondent herein, to pay the compensation amount to the appellant and recover the same from the owner of the vehicle, the first respondent herein. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

Date : 31.3.2017
skmr