SMT. JUSTICE T.RAJANI

MACMA. No.964 of 2006

JUDGMENT:

This appeal is preferred by the appellant, United India Insurance Company Limited, who is the 2nd respondent before the lower Court, assailing the order dated 27.01.2006 passed in O.P. No.74 of 1997 by the III Additional District and Sessions Judge, Gadwal, on the grounds that the lower Court while on the one hand accepted the judgments of the Supreme Court reported in the case of **NATIONAL INSURANCE COMPANY LIMITED Vs. BOMMITHI SUBBHAYAMMA AND OTHERS**[1] and **M.V. JAYADEVAPPA AND OTHERS V. ORIENTAL FIRE AND GENERAL INSURANCE COMPANY LIMITED AND OTHERS**[2] holding that the deceased is an unauthorised passenger in a transport goods vehicle, on the other hand, issued directions contrary to those two judgments.

The learned counsel for the appellant is present but the learned counsel for the respondent did not appear.

At the hearing, the contention of the learned counsel for the appellant is that the Insurance Company cannot be made liable as the deceased was travelling as gratuitous passenger in the crime vehicle. The lower Court relied on the judgments of the Apex Court supra, mentioned in the grounds, wherein it was held that the Insurance Company is not liable for payment of any compensation for the death of the gratuitous passenger travelling in goods vehicle and that the claimants are entitled to recover the amount of compensation from the owner of the vehicle. The learned counsel further emphasised the judgment two supra is to the effect that if the policy does not cover the risk of gratuitous passenger the Insurance Company cannot be fastened with any liability. The lower Court, however, considered that the policy

1 III(2005) DMC 423 (SC)
2 2005 ACJ 1801

was in force as on the date of the accident and directed the appellant, Insurance Company, to deposit the compensation amount and realise the same from the owner. The facts of the case would go to show that the deceased was boarding the lorry and before he got into the lorry, the accident has occurred due to the negligence of the driver of the crime vehicle, who started the vehicle before the deceased boarded the lorry. The deceased did not assume the character of the gratuitous passenger by the time of the accident as he was still in the process of boarding the lorry. Whether he was boarding the lorry for the purpose of travelling in the lorry or otherwise will not be known till the person boards the lorry. It is the responsibility of the lorry driver to keep proper lookout before starting the lorry. In this case, the driver of the vehicle failed to take such precautions due to which the deceased who was, in the process of boarding the lorry, fell down and met his end. Hence, it cannot be said that the deceased was travelling as gratuitous passenger and hence the Insurance Company has to be exonerated. Since the policy is in force, the appellant, Insurance Company, would be liable to pay the compensation as the accident has occurred due to rash and negligent driving of the driver of the offending lorry and as the deceased cannot be termed as a gratuitous passenger. But however, as there is no appeal preferred by the claimants or the owner, the order of the lower court, giving liberty to the appellant to recover the amount from the owner is not interfered with.

With the above observations, this appeal is liable to be dismissed and is accordingly, dismissed. There shall be no order as to costs.

Consequent to dismissal of the appeal, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

JUSTICE T.RAJANI

Date: 30.06.2017
LSK