HON'BLE SRI JUSTICE G.SHYAM PRASAD

MACMA No.381 OF 2006

JUDGMENT:

This appeal is arising out of the order, dated 22.12.2004, in MOP.No.1571 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Visakhapatnam (for short, "Tribunal").

2. The appellant is New India Assurance Company Limited, respondent No.2 in MOP.No.1571 of 2003. The legal representatives of deceased Y.Ramarao filed MOP.No.1571 of 2003 claiming compensation of Rs.5,00,000/- against respondent No.5, the owner of the crime vehicle. The Tribunal, on consideration of the evidence, awarded compensation of Rs.4,50,800/-. Challenging the quantum of compensation, the New India Assurance Company Limited filed the present appeal.

3. For the sake of convenience, the parties shall be referred to as they are arrayed before the Tribunal.

4. The brief facts of the case are that on 29.05.2002 while the deceased Y.Ramarao along with the first respondent, going to attend a marriage function at Sujathanagar, Pendurthy, Visakhapatnam on the motorcycle of the first respondent bearing No.AP31D 8467, being driven by the first respondent, and when they reached Anjaneyaswamy Temple,

Purushothapuram, the first respondent drove the motor cycle at high speed in a rash and negligent manner and dashed against a cycle, as a result of which, Y.Ramarao fell on the road and sustained grievous head injuries. Immediately, he was shifted to Apex Hospital, Visakhapatnam, but on 04.06.2002, he died due to head injury. The Police, Pendurthi registered a case in Crime No.99/2002 under Section 338 of IPC.

5. Heard Sri Kota Subba Rao, learned counsel for the appellant and Sri B.Parameswara Rao, learned Amicus Curiae, representing respondents.

6. The points for consideration in this appeal are (i) whether there are violation of terms and conditions of the insurance policy; (ii) whether the deceased traveled as an unauthorized passenger and (iii) whether the insurance company is liable to pay the compensation?

7. Learned counsel for the appellant submits that the deceased traveled as a pillion rider, as such, there is no coverage of the risk for the death or injury, as per act policy. Therefore, the insurance company is not liable to pay any compensation. Relying on a decision of the Supreme Court in **United India Insurance Co. Ltd., v. Tilak Singh[1],** it is submitted that as the insurance policy is a statutory policy, the insurance company is not liable to pay any compensation

[1] 2006 ACJ 1441

to the deceased, who was a pillion rider. He referred to para 21 of the said judgment, which reads as follows:

> "21. In our view, although the observations made in *Asha Rani's* case, 2003 ACJ 1 (SC), were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant insurance company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy and hence it did not cover the risk of death of or bodily injury to gratuitous passenger."

8. Learned counsel for the respondents submits that the Tribunal properly appreciated the evidence on record and held that respondents 1 and 2 are jointly and severally liable to pay the compensation, and that the compensation awarded by the Tribunal is justifiable and there are no valid grounds for seeking reduction of the compensation, and denying their liability.

9. In the light of the decision referred above, in a case of an act policy, when additional premium is not paid, the risk of the pillion rider is not covered. In the instant case, there is no risk coverage of a pillion rider, under the act policy. Therefore, the legal heirs of the deceased, claimants, are not entitled to claim compensation against the insurance company.

10. On consideration of the facts and circumstances of the case, and in the light of above decision, the insurance company is not liable to pay any compensation to the petitioners, who are respondents 1 to 4 herein. The owner of

the vehicle, respondent No.5, is alone liable to pay the compensation. Except the liability, the rest of the claim and award of compensation holds good. If any amount is paid, in pursuance of the award of the Tribunal, by the insurance company, and withdrawn by the petitioners, that cannot be recovered from the insurance company, since the Motor Vehicles Act is a beneficial legislation.

11. In the result, the appeal is partly allowed. The liability of the appellant – insurance company is exonerated and respondent No.5 alone is liable to pay the compensation as awarded by the Tribunal. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending shall stand closed.

G. SHYAM PRASAD, J

Date: 02.01.2017
TJMR