HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.3882 OF 2004

JUDGMENT:

The present Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, is directed against the order and the decree dated 31.12.2003 in O.P. No.128 of 1989, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge (Fast Track Court), Nizamabad.

2. By the aforesaid order, the Tribunal awarded a sum of Rs.2,34,000/- towards compensation for the death of one M. Krishna, whose parents are petitioner Nos.1 and 2, sisters are petitioner Nos.3 and 5, and the brother is petitioner No.4; who are respondent Nos.1 to 5 herein.

3. The petitioners claim was for Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). In fact, earlier, the award passed in the present O.P. was under challenge before this Court in C.M.A. No.188 of 1997, wherein, this Court by the judgment and decree dated 26.09.2002, remitted the matter to the Tribunal directing it to decide on the aspect of negligence of the drivers of the scooter and the car, permitting the parties to lead further evidence and to dispose of the claim petition preferably within a period of three (3) months. Pursuant to the said order, the Tribunal passed the aforesaid order, which is now under challenge by respondent No.2 viz., United India Insurance Company

Limited, on the main ground that the insurance policy was an 'Act policy' marked as Ex.B-7 and it does not cover risk of the 'pillion driver' and that the deceased was driving pillion at the relevant time.

4. Heard Sri Vutla Srinivasa Rao, learned standing counsel for the insurance company - appellant; and, on 08.09.2017, at request of the learned counsel for respondent Nos.1 and 2 - claimants, the matter was adjourned to 11.09.2017, on which day, again, it was adjourned to 18.09.2017, and from then, listed today having notified in the advance list, but, still there is no representation for the claimants.

5. Now the short question that arises for consideration is whether the award and the decree under challenge passed by the Tribunal cannot be sustained on the ground that the insurance policy under Ex.B-7 is an 'Act policy' and does not cover risk of the pillion rider?

6. Substantially the submission of the learned standing counsel for the appellant has been that Ex.B-7 does not cover risk of the pillion rider and the evidence of RWs.1 and 2 is also to the same effect, but, somehow, the Tribunal, while dealing with the additional issue No.1 in paragraph No.15 with regard to 'Act Policy Liability', relying on a ruling of the Division Bench of Kerala High Court in **United India Insurance Company Limited v. Appukuttan** [1995 ACC 888], decision of the Division Bench of Karnataka High Court in **Kashmir D. Gudinho v. Suresh Kulkarni** [1998 ACJ 1427],

Oriental Insurance Company Limited, Bangalore v. Minaxi [2000 ACJ Karnataka 385], **Ashok v. Narmada Bai** [2000 ACJ 553 Madhya Pradesh High Court at Jabalpur], and **Amrit Lal Sood v. Smt. Kaushalya Devi Thapar** [1998 ACJ 531 SC], recorded a finding that the pillion rider is covered under the third party policy risk. Of course, the Tribunal has neither discussed nor referred to any details of the decision of the Hon'ble Supreme Court in **Amrit Lal Sood v. Kaushalya Devi Thapar** [1998 ACJ 531 SC].

7. The learned Standing Counsel would submit that in a catena of decisions rendered by the Hon'ble Supreme Court report in **Ramashray Singh v. New India Assurance Company Limited** [AIR 2003 SC 2877], **Orissa Textile & Steel Limited v. State of Orissa** [2002 (2) SCC 578], **Dr. T.V. Jose v. Chacko P.M. alias Thankachan** [2001 (8) SCC 748], **Amrit Lal Sood v. Kaushalya Devi Thapar** [(1998) 3 SCC 744], **New India Assurance Company Limited v. Shanti Bai (SMT)** [(1995) 2 SCC 539], **National Insurance Company Limited, New Delhi v. Jugal Kishore** [(1988) 1 SCC 626] and **Pushpabai Purshottam Udeshi v. M/s. Ranjit Ginning & Pressing Company (P) Limited** [(1977) 2 SCC 745], dealt with the legal principle that where an 'Act policy' was issued, risk of the pillion rider is not covered. The learned counsel would submit that the trial Court, somehow, overlooked the legal aspect, the Hon'ble Supreme Court recognized the criteria to the effect that for

differentiating the liability under an 'Act policy' and 'optional policy' is to examine only whether additional premium is collected or not.

8. It is not in dispute in the present fact-scenario that the subject policy issued was an 'Act policy' and the deceased was riding pillion at the relevant time. In such an event, no further probe is required to be held that 'Act policy' does not cover risk of the pillion rider, and, therefore, the Tribunal, somehow, recorded a finding without properly appreciating the law on the subject. Hence, the said finding recorded by the Tribunal fixing liability on the insurance company i.e., the appellant herein, is withheld.

9. By the order dated 09.07.2004 in C.M.A. M.P. No.12353 of 2004, this Court directed the appellant to deposit Rs.1,00,000/- together with proportionate costs and interest within six (6) weeks, and, on such deposit, respondent Nos.1 and 2 - claimants were permitted to withdraw Rs.25,000/- each as well as the amount of costs and interest, without furnishing any security, concerning the amounts that were already withdrawn by respondent Nos.1 and 2 - claimants. The appellant is at liberty to recover the same from the owner of the vehicle, who is respondent No.6 herein and respondent No.1 in the O.P. The appellant is also at liberty to seek return of the amount, if the same is lying to the credit of the O.P. The respondents - claimants are at liberty to recover the balance amount awarded by the Tribunal with accrued interest thereon from the owner of the vehicle.

11. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the impugned order by exonerating the appellant - insurer from the liability to make payment of compensation to the respondents - claimants, as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

October 5, 2017.
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