

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1092 of 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant-the New India Assurance Company Limited, challenging the order, dated 14.07.2004, passed in O.P.No.768 of 2001, by the Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, Ranga Reddy District, at L.B.Nagar, Hyderabad ('the Tribunal', for brevity).

2. Heard the learned Standing Counsel for the appellant-Insurance Company, the learned counsel for the respondents 1 and 2/claimants, the learned counsel for the 3rd respondent-owner of the offending car bearing registration No.AP-10-M-2589 and perused the record.

3. The learned Standing Counsel for the appellant-Insurance Company would contend that the policy under which the offending car bearing registration No.AP-10-M-2589 was insured is an 'act Policy'. The deceased was a friend of the insured. There is no coverage of risk of the inmates of the offending car bearing registration No.AP-10-M-2589. The Tribunal erroneously fastened liability against the appellant-Insurance Company along with the 3rd respondent-owner of the offending car bearing registration No.AP-10-M-2589 and ultimately prayed to allow the appeal by setting aside the order under challenge.

4. On the other hand, the learned counsel for the respondents 1 and 2/claimants would contend that the respondents 1 and 2/claimants, aggrieved by the order impugned herein, have filed CMA

No.3534 of 2004 before this Court seeking enhancement of compensation. This Court, by order, dated 17.02.2011, allowed the said appeal by enhancing the compensation from Rs.3,14,880/- to Rs.10,28,000/-, but however, did not alter the direction given by the Tribunal to the appellant-Insurance Company to pay the compensation jointly and severally along with the 3rd respondent-owner of the offending car bearing registration No.AP-10-M-2589. Thus, the appellant-Insurance company is liable to pay compensation awarded along with the 3rd respondent-owner of the offending car bearing registration No.AP-10-M-2589.

5. In reply, the learned Standing Counsel for the appellant-Insurance Company would contend that aggrieved by the direction given to the appellant-Insurance Company by the Tribunal with regard to payment of compensation which was confirmed by this Court in CMA No.3534 of 2004, the appellant-Insurance company filed a Review petition in Rev.MACMAMP No.1898 of 2012 in CMA No.3534 of 2004. This Court, by order, dated 13.03.2012, allowed the said Review petition. Hence, the appellant-Insurance Company is absolved from its liability to pay compensation to the respondents 1 and 2/claimants along with the 3rd respondent-owner of the offending car bearing registration No.AP-10-M-2589.

6. The learned counsel for the 3rd respondent-owner of the offending car bearing registration No.AP-10-M-2589 would contend that the Tribunal rightly determined the compensation holding that there was violation of terms and conditions of the policy of insurance and rightly fastened liability against the appellant-Insurance Company. There is no infirmity in the order under challenge and

ultimately prayed to dismiss the appeal by confirming the order under challenge.

7. In view of the above rival contentions, the only point that arises for determination in this appeal is whether the order, dated 14.07.2004, passed in O.P.No.768 of 2001, by the Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, Ranga Reddy District, at L.B.Nagar, Hyderabad is liable to be set aside.

8. The respondents 1 and 2/claimants, to substantiate their claim, got examined P.Ws.1 to 3 and got marked Exs.A.1 to A.17. Exs.A.1 to A.17, which are the documents relating to the criminal case record, educational qualifications of the deceased etc. On behalf of the appellant-Insurance Company, R.W.1 was examined and Ex.B.1-copy of insurance policy was marked. The evidence of R.W.1 is that the policy of insurance under which the offending car bearing registration No.AP-10-M-2589 is insured, does not cover the risk of the friends and relatives travelling by the said car. The deceased, along with respondent No.3 and another person, was travelling in the offending car bearing registration No.AP-10-M-2589 on the date of the subject accident to attend a marriage. Therefore, it can be safely concluded that the deceased was a gratuitous passenger travelling in the offending car bearing registration No.AP-10-M-2589 as on the date of the subject accident.

9. It is apt to refer to the decision of the Apex Court in *Manuara Khatun and others Vs. Rajesh Kumar Singh and others*¹. In the cited case, the deceased was travelling in a Tata Sumo as a

¹ (2017) 4 Supreme Court Cases 796

gratuitous passenger. The insurance policy of the said vehicle was an 'act Policy' and it is a passenger vehicle. In view of the same, the Apex Court directed the insurer to satisfy the award at the first instance and then recover the same from the insured in the same proceedings by filing Execution Application before the Tribunal. The facts of the cited decision are squarely applicable to the facts of the case on hand. In the instant case also, the deceased was a gratuitous passenger travelling in the offending car bearing registration No.AP-10-M-2589, which is a passenger vehicle. The policy of insurance is an 'act Policy'. Therefore, the benefit extended by the Apex Court in the cited decision to the claimants therein can also be extended to the claimants herein.

10. Accordingly, the appellant-Insurance Company is directed to deposit the compensation awarded by the Tribunal at the first instance and then recover the same from the owner of the offending car bearing registration No.AP-10-M-2589 in the same proceedings by filing an Execution Application before the Tribunal.

11. With the above direction, this appeal is disposed of. * No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

28th September, 2018
Bvv

Dr. SHAMEEM AKTHER, J