

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.3232 of 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity), is filed by the appellant-the New India Assurance Company Limited, challenging the order, dated 25.02.2005 passed in O.P.No.165 of 2000 by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Nizamabad ('the Tribunal', for brevity), whereby, the appellant-Insurance Company was directed to pay the compensation awarded in favour of the respondents 1 to 6/claimants, jointly and severally along with the 7th respondent/owner of the offending vehicle.

2. Heard the learned Standing Counsel for the appellant-insurance Company, the learned counsel for the respondents 1 to 6/claimants and perused the record.

3. The learned Standing Counsel for the appellant-Insurance Company would contend that when the deceased was waiting for a bus at Ramayampet village to go to Kamareddy, the driver of the offending vehicle (lorry tanker bearing registration No.ATR-459) came there and offered to carry the persons who were waiting at the bus stop on payment of hire charges. In that process, the deceased-Srisailam boarded the offending vehicle. When the offending vehicle reached near Bhiknoor residential school, the driver of the same drove the vehicle in rash and negligent manner and dashed a Margosa tree, as a result which,

the deceased sustained injuries on his vital parts and died on the spot. Hence, the deceased was a gratuitous passenger. The Tribunal erroneously held that the appellant-Insurance Company is jointly and severally liable to pay compensation to the respondents 1 to 6/claimants and ultimately prayed to allow the appeal.

4. On the other hand, the learned counsel for the respondents 1 to 6/claimants would contend that the Tribunal had rightly analysed the entire evidence on record and granted compensation in favour of the respondents 1 to 6/claimants. There are no circumstances to interfere with the same and ultimately prayed to dismiss the appeal.

5. In view of the rival contentions of both the learned counsel, the point that arises for determination in this appeal is whether the appeal is liable to be allowed as prayed for.

6. It is not in dispute that the deceased suffered injuries in the motor accident occurred on 08.06.1999, due to the rash and negligent driving of the driver of the offending vehicle bearing registration No.ATR-459 and succumbed to the same. The only dispute is with regard to the liability of the appellant-Insurance Company to pay compensation jointly and severally along with the owner of the offending vehicle.

7. It is apt to refer the decision of the Apex Court in *New India Assurance Company Limited v. Asha Rani and*

others¹, wherein, the deceased travelled in a goods vehicle as a gratuitous passenger and in the circumstances, the Apex Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants.

8. As per the evidence on record, the deceased was a gratuitous passenger on the offending lorry tanker bearing registration No.ATR-459 and succumbed to the injuries suffered by him in the subject accident occurred due to the rash and negligent driving of the driver of the said lorry tanker. Copy of the Insurance Policy is marked as Ex.B.1. A perusal of the said Insurance Policy makes it clear that it does not cover the risk of gratuitous passengers. The decision of the Apex Court in Asha Rani's case *supra* holds the field. Under these circumstances, the Tribunal erred in directing the appellant-Insurance Company to pay compensation awarded to the respondents 1 to 6/claimants jointly and severally along with the 7th respondent-owner of the offending vehicle. Accordingly, the said finding is liable to be set aside.

9. In the result, the appeal is allowed and the impugned order, dated 25.02.2005, passed in O.P. No.165 of 2000 by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Nizamabad, against the appellant-Insurance Company is set aside.

10. At this stage, it is brought to the notice of this Court that the respondents 1 to 6/claimants were permitted to withdraw

¹ 2003(2) SCC 223

the amount deposited by the appellant-Insurance Company in the subject O.P. Under these circumstances, the appellant-Insurance Company is entitled to recover the said amount from the 7th respondent/owner of the offending vehicle by filing Execution Application in the same proceedings before the Tribunal, without there being any separate case.

Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

12th July, 2018
Bvv

