THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.2996 OF 2004

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellants/claimants dissatisfied by the grant of compensation of Rs.1,50,000/- with proportionate costs and interest at the rate of 9% per annum from the date of petition till realisation as against a claim of Rs.4,00,000/- by the learned Chairman, Motor Accident Claims Tribunal – cum – Additional District Judge, Nizamabad (for short, "the Tribunal") *vide* order, dated 15.07.2003, passed in O.P.No.262 of 2001, and also aggrieved by not tagging the liability on respondent No.2/the United India Insurance Company Limited.

2. Heard the submissions of the learned counsel appearing for the appellants/claimants and the learned Standing Counsel appearing for the United India Insurance Company Limited for respondent No.2, and perused the material available on record.

3. Learned counsel for the appellants/claimants would contend that the Tribunal granted a compensation of Rs.1,50,000/- as against a claim of Rs.4,00,000/-, on account of the death of the deceased Akula Bhupathi, who is the son of the claimants and died in a motor accident that occurred on 04.01.2000, and the same is meagre. He would further contend that respondent No.2/Insurance Company is liable to pay the compensation to the claimants at the first instance and then, to recover the same from the owner of the tractor bearing No.AP-25-T-3465 and trailer bearing No.AP-25-T-3466 (offending vehicle). In support of his

case, he relied on a decision reported in **Manuara Khatun and others v. Rajesh Kumar Singh and others**[1] wherein it is held at para No.7 as under:

> ***"Dissatisfied with the award, appeals bearing MAC Appeal No.7 of 2009 and MAC Appeal No.8 of 2009 under Section 173 of the Motor Vehicle Act, 1988 (hereinafter referred to as "the Act") were filed before the High Court by the claimants for enhancement of the compensation amounts awarded by the Tribunal. The other ground raised before the High Court was that it was the liability of the Insurance Company of the offending vehicle to compensate the claimants jointly and severally with the owner of the Tata Sumo and in any event, the direction to pay the compensation by the insurer of offending vehicle and then to recover from its insured should have been passed against the Insurer (respondent No.3)"***

4. On the other hand, learned Standing Counsel for respondent No.2/Insurance Company would contend that the facts and circumstances of the decision relied upon by the learned counsel for the appellants are different and therefore, the above referred decision has no application to the facts on hand and ultimately, prayed to dismiss the appeal. In support of his contention, he placed reliance on a decision reported in **Oriental Insurance Co. Ltd., vs. Brij Mohan and others**[2] wherein the Apex Court held that as the claimant therein was a gratuitous passenger, he is not entitled for compensation from the Insurance Company and even a pay and recover direction cannot be given.

5. In view of the submissions made by the learned counsel for the appellants and the learned Standing Counsel appearing for the United India Insurance Company Limited, the points that arise for determination are:

[1] 2017 (2) ALD 65 (SC)
[2] (2007) 7 Supreme Court Cases 56

> ***"1) Whether the appellants/claimants are entitled for enhancement of compensation as prayed? and***
>
> ***2) Whether the liability can be tagged to respondent No.2/Insurance Company to the extent of directing to pay the compensation at the first instance and then to recover the same from the owner of the offending vehicle?"***

6. **<u>POINT No.1</u>:-** The Tribunal, while dealing with the subject matter of the appeal, granted a compensation of Rs.1,50,000/- as against the claim of Rs.4,00,000/- with proportionate costs and interest at 9% per annum from the date of petition till the date of realisation for the death of the deceased Akula Bhupathi in a motor accident that occurred on 04.01.2000. While determining the compensation, the Tribunal had taken the income of the deceased as Rs.1,000/- per month, his age as 19 years and applied the correct multiplier "16" and awarded the said compensation with interest thereon. Since the accident pertains to the year 2000, assessment of income of the deceased at Rs.1,000/- per month and the application of multiplier "16", and deduction of 1/3rd thereof towards personal expenses of the deceased, cannot be faulted with. The assessment and grant of compensation by the Tribunal is based on the principles governing on the date of death of the deceased. There are no circumstances to enhance the compensation.

7. **<u>POINT No.2</u>:-** As per the evidence on record and also the submissions made by the parties, the deceased Akula Bhupathi was said to be working as a labourer and travelling by trailer

bearing No.AP-25-T-3466 attached to the tractor bearing No.AP-25-T-3465 and succumbed to the injuries in an accident caused due to the rash and negligent driving of the driver on 04.01.2000. In the decision relied upon by the learned counsel for the appellants in **Manuara Khatun**'s case (1 supra), the deceased was travelling in a private passenger vehicle. Therefore, the Apex Court directed the Insurance Company to pay the compensation at the first instance and then, to recover the same from the owner of the offending vehicle whereas in the citation relied on by the learned Standing Counsel for the Insurance Company in **Brij Mohan**'s case (2 supra), the deceased was travelling on a trolley attached to a tractor. There was no insurance covering the gratuitous passenger travelling on the trolley of the tractor and held that the insurer was not liable to pay the compensation. It is appropriate to state that the deceased in the present case was travelling as a gratuitous passenger in trailer bearing No.AP-25-T-3466 attached to tractor bearing No.AP-25-T-3465. The policy of insurance was only an act policy. There is no coverage of risk of the passengers travelling in the trailer. The facts and circumstances of the case on hand are quite distinct from the facts and circumstances of the decision reported in **Manuara Khatun'**s case (1 supra). The claimants are not similarly placed. The decision rendered in **Brij Mohan**'s case (2 supra) is applicable to the case on hand. Since the deceased was a gratuitous passenger travelling by the trailer bearing No.AP-25-T-3466 of the tractor bearing No.AP-25-T-3465, in the absence of coverage of risk of the gratuitous passenger, no direction can be given as prayed for by the learned counsel for the appellants. Therefore, no liability can be tagged to respondent No.2/Insurance Company and even a direction to pay and recover cannot be given. There is no need to interfere with the impugned judgment of the Tribunal. Hence, the appeal is devoid of merit and is liable to be dismissed.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

9. Miscellaneous petitions pending, if any, in this Civil Miscellaneous Appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 08.08.2018
AMD

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते

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