

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2483 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellants/claimants seeking to tag the liability on the National Insurance Company Limited/respondent No.1 also in the order, dated 08.01.2003, passed in O.P.No.1094 of 2000 passed by the learned Chairman, Motor Accident Claims Tribunal – cum – I Additional District Judge, East Godavari District at Rajahmundry (for short, “the Tribunal”).

2. Heard the submissions of the learned counsel appearing for the appellants/claimants and the learned Standing Counsel appearing for the National Insurance Company Limited for respondent No.1, and perused the material available on record.

3. Learned counsel for the appellants/claimants would contend that at the instance of the driver of the lorry bearing No.MH.34.A.630, the deceased Nagulapalli Srinivasarao got into the said lorry and succumbed to injuries due to the rash and negligent driving of the driver of the subject lorry and ultimately, prayed to allow the claim petition jointly and severally against all the respondents.

4. On the other hand, learned Standing Counsel appearing for the National Insurance Company Limited for respondent No.1 would contend that the deceased Nagulapalli Srinivasarao was a gratuitous passenger and the Tribunal, having analysed the entire

evidence on record, held the same and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel for both sides, the short point that arises for determination is:

“Whether respondent No.1/Insurance Company be also made liable to pay the compensation to the claimants?”

6. **POINT:-** There is no dispute with regard to the assessment and awarding of compensation by the Tribunal. The only dispute is with regard to dismissing the claim against the Insurance Company by the Tribunal. Having analysed the entire evidence on record, the Tribunal held that the deceased Nagulapalli Srinivasarao was a gratuitous passenger in the offending lorry bearing No.MH.34.A.630. Though the claimants contended that the deceased Nagulapalli Srinivasarao boarded the lorry at the request of the driver to show the route to National Highway and on a promise of payment of Rs.50/-, this aspect was not mentioned in Ex.A-1 – F.I.R. The Tribunal has also dealt with this aspect elaborately and held that the deceased Nagulapalli Srinivasarao was an unauthorised passenger. It is apt to refer the decision of the Hon’ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**¹, wherein the deceased travelled in a goods vehicle and the Hon’ble Supreme Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants.

¹ 2003(2) SCC 223

7. The decision rendered in **Asha Rani's** case (1 supra) is applicable to the facts of the present case. In view of the said decision, gratuitous passengers are not entitled for compensation from the insurer. Hence, the Tribunal justified in dismissing the claim against the Insurance Company/respondent No.1 herein. There are circumstances to vary with the judgment of the Tribunal. Hence, the appeal is devoid of merit and is liable to be dismissed.

8. Accordingly, this appeal is dismissed. There shall be no order as to costs.

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

Date : 17.08.2018
AMD

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