

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3235 of 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity) is filed by the appellant-the United India Insurance Company Limited, challenging the order, dated 26.09.2000, passed in O.P.No.90 of 2000, by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Warangal ('the Tribunal', for brevity).

2. Heard the learned counsel for both sides and perused the record.

3. The learned Standing Counsel for the appellant-Insurance Company would contend that the deceased was a gratuitous passenger in tractor-trailer bearing registration Nos.AP-36-U-1969 & 1970. There was no valid insurance policy to cover the risk of the deceased. The Tribunal erroneously tagged the liability against the appellant-Insurance Company 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 to 5-claimants would contend that the deceased-V.Pulsingh carried paddy bags and cotton bags to Kesamudram market. While returning, he suffered injuries in the subject accident, due to rash and negligent driving of the driver of the tractor-trailer bearing registration Nos.AP-36-U-1969 & 1970 and succumbed to the same. The Tribunal, relying on Ex.A.5-Xerox copy of the insurance policy, held that there was valid insurance policy in respect of the

offending tractor-trailer bearing registration Nos.AP-36-U-1969 & 1970 and that the said policy was in force as on the date of accident and ultimately held that the appellant-Insurance Company is liable to pay compensation to the claimants. There are no circumstances to interfere with the impugned order and ultimately prayed to dismiss the appeal by confirming the Order under challenge.

5. As per the material placed on record, the deceased-V.Pulsingh died in a motor accident occurred on 30.12.1999, due to rash and negligent driving of the driver of the tractor-trailer bearing registration Nos.AP-36-U-1969 & 1970. There is no much dispute with regard to the assessment and award of compensation of Rs.2,17,000/- with interest @ 12% per annum from the date of petition till realisation in favour of the respondents 1 to 5/claimants by the Tribunal. The only dispute is with regard to the appellant's liability to pay compensation.

6. As per the evidence on record, the deceased carried paddy bags and cotton bags to Kesamudram market. While returning, he suffered injuries in the subject accident and succumbed to the same, due to rash and negligent driving of the driver of the tractor-trailer bearing registration Nos.AP-36-U-1969 & 1970. As per Ex.A.5-Xerox copy of Insurance Policy, the offending tractor-trailer bearing registration Nos.AP-36-U-1969 & 1970 was registered for agricultural purpose. It ought to have been used for commercial purpose. When the deceased carried paddy bags and cotton bags to Kesamudram market and while he was returning in the empty offending tractor-trailer bearing registration Nos.AP-36-U-1969 &

1970 along with P.W.2, he was a gratuitous passenger and he cannot be treated as owner of goods. There is no coverage of risk of gratuitous passengers travelling in the offending tractor-trailer bearing registration Nos.AP-36-U-1969 & 1970. Moreover, the subject accident occurred on 30.12.1999. In view of the same, the Tribunal ought not to have tagged liability of payment of compensation on the appellant-Insurance Company. Therefore, the impugned order passed against the appellant-Insurance Company is liable to be set aside.

7. In the result, the appeal is allowed and the impugned order, dated 26.09.2000, passed in O.P.No.90 of 2000, by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Warangal, is set aside, insofar as appellant-Insurance Company is concerned.

8. At this juncture, it is brought to the notice of this Court that pursuant to the impugned order, 50% of the compensation was already deposited by the appellant-Insurance Company before the Tribunal. If the respondents 1 to 5-claimants have already withdrawn the said amount, the appellant-Insurance Company is entitled to recover the same from the owner of the offending tractor-trailer bearing registration Nos.AP-36-U-1969 & 1970 (6th respondent herein) in the same proceedings before the Tribunal by filing an Execution Application.

Miscellaneous Petitions pending, if any, shall stand closed.
No order as to costs.

26th July, 2018
Bvv

Dr. SHAMEEM AKTHER, J