THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

C.M.A.No.3304 OF 2004

JUDGMENT:

This appeal is filed by the appellants-claimants under Section 173 of the M.V. Act, aggrieved by the order, dated 11.12.2003 in O.P. No.303 of 2000, passed by the Motor Accident Claims Tribunal-cum- District Judge, Nellore.

2. Vide the impugned order, the Tribunal granted compensation of Rs.1,73,000/- to the appellants-claimants for the death of deceased Chitteti Sriramulu, who is husband of appellants-claimant No.1 and father of other appellants-claimants, in a road accident that occurred on 17.05.1999 due to head on collision of two lorries bearing Nos.TAI 2984 and TN 57/A-7809, while the deceased was traveling in the former lorry. The Tribunal granted the compensation against owner and insurer of lorry bearing No.TN 57/A 7809 (Respondents 3 and 4) and against owner of the other lorry bearing registration No.TAI 2984 i.e. Respondent No.1.

3. Heard the learned counsel for the appellants-claimants, the learned standing counsel for the respondents-insurance company and perused the record.

4. Learned counsel for the appellants-claimants would submit that Ex.B1-insurance policy relating to lorry bearing No.TAI 2984, wherein the deceased was traveling, was in force on the date of the accident, and hence, the claimants are entitled to recover the compensation awarded from the insurer of the said lorry also. In support of his contention, he relied on a decision in **MANUARA KHATUN AND**

OTHERS V RAJESH KUMAR SINGH AND OTHERS [1], wherein it was held as follows (paras 17 and 22):

> "The facts of the case at hand are somewhat identical to the facts of the case mentioned supra because here also we find that the deceased were found travelling as 'gratuitous passengers' in the offending vehicle and it was for this reason, the insurance companies were exonerate. In *Saju P.Paul case* (National Insurance Co. Ltd. V Saju P.Paul (2013) 2 SCC 41)) also having held that the victim was 'gratuitous passenger', this Court issued directions against the insurer of the offending vehicle to first satisfy the awarded sum and then to recover the same from the insured in the same proceedings.
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> Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that Respondent 3 United India Insurance Co. Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter Respondent 3 United India Insurance Co. Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending vehicle (Tata Sumo) Respondent 1 in these very proceedings by filing executing application against the insured."

5. On the other hand, learned standing counsel for the respondents-Insurance Companies would contend that the subject policy is an act policy; that the deceased-Chitteti Sriramulu, was a unauthorized passenger traveling in the goods vehicle i.e. lorry bearing No.TAI 2984, and hence, the insurers are not liable to pay compensation to the dependants of the deceased.

In support of their contention, they relied on a Division Bench decision of this Court in **BRANCH MANAGER, UNITED INDIA INSURANCE CO, LTD., KAMAREDDY, NIZAMABAD DISTRICT V KONDAKOTLA SAROJA AND OTHERS** [2], wherein it was held as follows (paras 9 and 10):

> "The Insurance Company in its counter specifically denied its liability pleading that Act Policy has been issued to the vehicle which is hired to Eenadu Daily Newspaper against the policy conditions in which the deceased traveled as an unauthorized passenger at the time of accident. Therefore, the Insurance Company cannot be held liable.
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> In substantiation of the above plea, the Assistant of the Insurance Company is examined as R.W.1. He deposed that according to police report, about nine persons were traveling in the vehicle at the time of the accident. As per the policy conditions, if the persons traveling in the vehicle are unauthorized, then the Insurance Company is not liable to pay

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[1] (2017) 4 SCC 796
[2] 2008 (5) ALD 288 (DB)

> the compensation. He denied the suggestion that the deceased along with the other two friends of respondent No.1 (owner) went to Kamareddy on the work of respondent No.1 and they are not traveling as fare paid passengers and also denied the suggestion that only five passengers were traveling in the jeep but not nine passengers and that the deceased comes under 'third party'."

Ultimately, it was held in the above decision that once insurance company has not undertaken the liability by collecting extra premium for the passengers who travelled in the insured vehicle as gratuitous passengers, it cannot be held liable to pay the compensation and it is only the owner of the vehicle who is liable to satisfy the decree and pay compensation amount.

Relying on the aforesaid decision, the learned standing counsel for the respondents-insurance companies would contend that as the deceased was only a gratuitous passenger in the offending vehicle and the policy of insurance was only an act policy, there is no coverage of risk of the deceased, and as such, the claimants-dependants of the deceased are not entitled to claim compensation from the insurance companies, and that the Tribunal rightly dismissed the claim petition against the insurer of lorry bearing No.TAI 2984 and the same needs no interference by this Court.

6. Death of the deceased Chitteti Sriramulu in a road accident that occurred on 17.05.1999 due to rash and negligent driving of drivers of offending vehicles viz. two lorries bearing Nos.TAI 2984 and TN 57/A-7809, is not disputed. The Tribunal rightly held that the accident occurred due to contributory negligence and composite negligence of drivers of both the lorries and the same needs no interference. The only dispute is with regard to tagging the liability to the insurer of lorry bearing registration

No.TAI 2984, to pay the compensation awarded by the Tribunal.

7. It is pertinent to note that the deceased Chitteti Sriramulu was traveling by one of the offending lorries viz. lorry bearing registration No.TAI 2984 at the time of the subject accident. There is also evidence to hold that the deceased was a gratuitous passenger in the said lorry. In **New India Assurance Company Limited v. Asha Rani and others**[3], it is held that gratuitous passengers travelling in a goods vehicle are not entitled for compensation from the insurer of the vehicle. In the instant case, the vehicle involved viz. lorry bearing registration No.TAI 2984, is a goods vehicle. Under Ex.B1-policy of insurance, there is no coverage of risk of the gratuitous passenger travelling in the said vehicle viz. lorry bearing registration No.TAI 2984**.** In *Manuara Khatun's* case (2 supra), the deceased was travelling by a passenger carrying vehicle and the policy of insurance was an act policy. So, the Apex Court directed the insurer therein to satisfy the award passed at the first instance and then recover the same from the owner of the offending vehicle. The facts and circumstances of the said case are not similar to the facts and circumstances of the present case. Since the deceased was a gratuitous passenger in a goods vehicle and as there was no coverage of his risk by the insurer of the lorry bearing registration No.TAI 2984, by which he was travelling, even a direction to pay and recover from the insured, cannot be given to the insurer. The Tribunal rightly adjudicated the liability against respondent No.2-insurer. There is nothing to take a different view. The appeal is devoid of merit and is liable to be dismissed.

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[3] 2003(2) SCC 223

8. In the result, the appeal is dismissed. No order as to costs of the appeal.

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

DR.SHAMEEM AKTHER, J

11.09.2018
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