

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2566 OF 2005

JUDGMENT:

This appeal is filed by the appellant-Insurance Company under Section 173 of the M.V. Act, aggrieved by the order, dated 31.12.2004 in O.P.No.1042 of 1999, passed by the Motor Accident Claims Tribunal-cum-I Additional District Judge, Nizamabad, wherein compensation of Rs.68,500/- was granted to the respondent-claimant against the appellant-insurance company and respondent No.2-owner jointly and severally.

2. Heard the learned standing counsel for the appellant-Insurance Company, the learned counsel for the respondent-claimant and perused the record.

3. Learned standing counsel for the appellant-Insurance Company would contend that the subject policy is an act policy. The respondent-claimant, was a gratuitous passenger in Jeep bearing No.MH 26C 161; that on 02.03.1999, when the respondent-claimant was traveling in the vehicle, due to rash and negligent driving of the driver, the vehicle turned turtle, as a result of which the respondent-claimant suffered injuries.

He 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**¹, 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.

In substantiation of the above plea, the Assistant of the Insurance Company is examined as R.W.1. He deposed that

¹ 2008 (5) ALD 288 (DB)

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 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 appellant-insurance company would contend that the respondent-claimant was only a gratuitous passenger in the offending vehicle and the policy of insurance was only an act policy, and therefore, there is no coverage of risk of the respondent-claimant, and as such, he is not entitled to claim compensation from the insurance company. It is further contended that the Tribunal had granted interest @ 9% per annum, which is excessive, and ultimately prayed to set aside the impugned order insofar as the appellant-insurance company is concerned.

4. On the other hand, learned counsel for the respondent-claimant would submit that though the subject insurance policy is an act policy, the claimant is entitled to recover the compensation awarded from the insurer. In support of his contention, he relied on a decision in

MANUARA KHATUN AND OTHERS V RAJESH KUMAR SINGH AND OTHERS ², 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.

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.”

Relying on the above decision, it is contended by the learned counsel for the respondent-claimant that the claimant is entitled to recover the compensation awarded, from the Insurance Company.

5. The respondent-claimant sustaining injuries in a road accident that occurred on 02.03.1999 due to rash and negligent driving of driver of offending vehicle viz. Jeep bearing No. MH 26C 161, is not disputed. As against the claim of Rs.2,00,000/-, the Tribunal awarded a compensation of Rs.68,500/- with interest @ 9% per annum from the date of petition till the date of realization. With regard to rate of interest awarded by the Tribunal, it is pertinent to refer to a decision reported in **DHARAM PAL AND OTHERS V STATE ROAD TRANSPORT CORPORATION** ³, wherein it was held that interest payable to the claimants is @ 7.5% p.a. Therefore, there is no justification in awarding the interest at 9% p.a. by the Tribunal. So, the same is liable to be reduced to 7.5% p.a.

² (2017) 4 SCC 796

³ MANU SC 7680 2008

6. As regards the liability of the appellant-insurance company, basing on the oral and documentary evidence, the respondent-claimant was a gratuitous passenger traveling by the offending vehicle which met with accident on 02.03.1999 resulting in injuries to him. The policy of insurance of the offending vehicle is only an act policy. Learned standing counsel for the insurance company relied on an unreported decision dated 06.12.2017 of the Apex Court rendered in *Smt. Shanthamma & another v. United India Insurance Company Limited & another* (Civil Appeal No.20927 of 2017) and contended that the directions given by the Apex Court to pay and recover in case of gratuitous passenger are only in exercise of the jurisdiction of the Apex Court under Article 142 of the Constitution of India and the directions so given do not operate as precedent and this Court has no power to give such a direction. On perusal of the aforesaid decision, there is mention that the Hon'ble Supreme Court had exercised its jurisdiction under Article 142 of the Constitution of India and directed the insurer to pay the awarded amount at first instance and thereafter recover the same from the owner of the offending vehicle. However, in the decisions rendered by the Hon'ble Apex Court in *Saju P.Paul* case {(2013) 2 SCC 41} and in *Manuara Khatun's* case (2 supra), there is no mention that the Apex Court exercised its jurisdiction under Article 142 of the Constitution of India in directing the insurance company to satisfy the awarded amount in the first instance and thereafter recover the same from the owner of the offending vehicle. So, the decisions rendered by the Hon'ble Apex Court in *Saju P.Paul* case {(2013) 2 SCC 41} and in *Manuara Khatun's* case (2 supra) can be relied upon to determine the contentions raised by the parties as the

respondent-claimant was a gratuitous passenger in the offending vehicle to meet the benevolent object of the Motor Vehicles Act, 1988.

7. Under these circumstances, the impugned order is modified and the appellant-Insurance Company is directed to pay the compensation awarded to the respondent-claimant. Thereafter, the appellant-Insurance Company would be entitled to recover the compensation amount so deposited, from the owner of the offending vehicle viz. Jeep bearing No. MH 26C 161., 2nd respondent herein, in the very proceedings before the Tribunal by filing execution application.

8. With the above direction, the Civil Miscellaneous Appeal is allowed as indicated above. The claimant is entitled to interest at 7.5% p.a. only on the compensation amount granted by the Tribunal from the date of petition till the date of deposit. No order as to costs of the appeal. The other terms of the impugned order shall remain unaltered.

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

9th.07.2018
DRK

DR.SHAMEEM AKTHER, J

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER



9th.07.2018

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