THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3350 of 2005

JUDGMENT:-

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant-National Insurance Company Limited, challenging the Order, dated 29.06.2005, passed in M.V.O.P.No.548 of 2001, by the Motor Accident Claims Tribunal-cum-VIII Additional District Judge (FTC), East Godavari at Amalapuram ('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-Chimmili Veerraju was a gratuitous passenger in the offending lorry bearing registration No.ABK-5225. There was no coverage of risk of the gratuitous passengers travelling in the offending lorry under Ex.B.1-Insurance policy. The Tribunal erroneously directed the appellant-Insurance Company to deposit the compensation awarded at the first instance and then recover the same from the owner of the offending lorry bearing registration No.ABK-5225 and ultimately prayed to set aside the Order under challenge.

4. On the other hand, the learned counsel for the respondents 1 to 5/claimants would contend that the offending lorry bearing registration No.ABK-5225 was validly insured with the appellant-claimant. The Tribunal rightly directed the appellant-Insurance Company to deposit the compensation awarded at the first instance

and then recover the same from the owner of the offending vehicle and ultimately prayed to dismiss the appeal by confirming the Order under challenge.

5. It is not in dispute that the deceased-Chimmili Veerraju suffered fatal injuries in the subject accident occurred on 24.01.2001, due to rash and negligent driving of the driver of the lorry bearing registration No.ABK-5225 and succumbed to the same. The point that arises for determination in this appeal is whether the direction given by the Tribunal to the appellant-Insurance to deposit the compensation awarded at the first instance and then recover the same from the owner of the offending vehicle is sustainable.

6. As per the evidence placed on record, the deceased-Chimmili Veerraju was the owner of the lorry bearing registration No.AP-09-T-2549. He used to drive the said lorry in the absence of its driver. Two days prior to the subject accident, the deceased accompanied the driver of his lorry as a cleaner to go to Peddadornala village for unloading some material. As the tyres of his lorry gave some trouble at Peddadornala, the deceased boarded the offending lorry bearing registration No.ABK-5225 to go to his village Manepalli. He was travelling in the offending lorry by sitting in the cleaner's seat. Meanwhile, the driver of the offending lorry drove the same in a rash and negligent manner and dashed a stationed lorry bearing registration No.AIL-3679 from backside. The front portion of the offending lorry was completely damaged and the iron angulers loaded in the offending lorry pierced into the body of the deceased causing his instantaneous death.

7. The Tribunal, relying on the oral evidence of P.Ws.1 to 4 and the documentary evidence under Ex.A.1-Attested copy of FIR No.10/2001 of Bhimadole Police Station, East Godavari District and Ex.A.2-Attested copy of Inquest report, held that the deceased was travelling in the offending lorry bearing registration No.ABK-5225 as a gratuitous passenger and that the offending lorry was validly insured with the appellant-Insurance Company and directed the appellant-Insurance Company to deposit the compensation awarded at the first instance and then recover the same from the owner of the offending lorry.

8. It is apt to refer to the decision of the Apex Court in New India Assurance Company Limited Vs. Asha Rani and others[1], wherein, the deceased travelled in a goods vehicle as a gratuitous passenger and in the circumstances, the Apex Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants. In the decision rendered by the Apex Court in National Insurance Company Limited Vs. Baljit Kaur and others[2], the Apex Court held that the decisions are prospective in nature. The impugned order was passed by the Tribunal on 29.06.2005, i.e., after the decision rendered by the Apex Court in Asha Rani's case (1 supra) on 17.08.2001. Therefore, the decision of the Apex Court in Baljit Kaur's case (2 supra) has no application to the instant case. In the instant case, the deceased was travelling in a goods vehicle as a gratuitous passenger. There is evidence of R.W.1 that Ex.B.1-Insurance

[1] 2003 (2) SCC 223
[2] 2004 (1) TAC 336 (SC)

policy is an 'act Policy' and it does not cover the risk of the gratuitous passengers. Viewed from any angle, in view of the law laid down by the by the Apex Court in the aforementioned decision in Asha Rani's case (1 supra), the Tribunal ought not to have directed the appellant-Insurance Company to deposit the compensation at the first instance and then recover the same from the owner of the offending vehicle. Therefore, the impugned order is liable to be set aside.

9. Accordingly, the appeal is allowed and the impugned Order, dated 29.06.2005, passed in M.V.O.P.No.548 of 2001, by the Motor Accident Claims Tribunal-cum-VIII Additional District Judge (FTC), East Godavari at Amalapuram, against the appellant-Insurance Company, is set aside. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

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Dr. SHAMEEM AKTHER, J

11th September, 2018
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