THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3461 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/the United India Insurance Company Limited challenging the order, dated 17.08.2005, passed in M.A.T.O.P.No.395 of 2001 by the learned Chairman, Motor Accident Claims Tribunal – cum – IV Additional District Judge (Fast Track Court-III), Khammam (for short, "the Tribunal").

2. Heard the submissions of the learned Standing Counsel appearing for the United India Insurance Company Limited representing the appellant. There is no representation on behalf of respondent No.1/claimant. The appeal pertains to the year 2005. So, it can be disposed of basing on the material available on record.

3. Learned Standing Counsel for the United India Insurance Company Limited representing the appellant would contend that the subject jeep bearing No.AP-20-V-4224/offending vehicle was used for private purposes and no premium was paid for the passengers travelling in the said jeep and there is evidence of R.W.1 to that effect; that there are no documents to show that there was coverage of risk to the passengers travelling in the offending vehicle at the time of the accident; that the Tribunal erroneously directed this appellant to deposit the compensation at the first instance and recover the same from the owner of the jeep and ultimately, prayed to set aside the impugned order and allow the appeal as prayed for.

4. In view of the submissions made on behalf of the appellant/Insurance Company, the point that arises for determination is:

> ***"Whether the Tribunal is justified in directing the appellant/Insurance Company to pay the compensation at the first instance and then, recover the same from the owner of the offending vehicle?***

5. **POINT:-** As per the evidence placed on record, the claimant was travelling in the jeep bearing No.AP-20-V-4224 (offending vehicle) and she suffered injuries in the motor accident occurred due to the rash and negligent driving of the driver of the said jeep/ offending vehicle. As against the claim of Rs.75,000/-, the Tribunal assessed the compensation payable at Rs.55,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The assessment and awarding of compensation is based on the injuries suffered by the claimant, nature of treatment taken by her etc. There is justification in awarding the said compensation. Admittedly, the jeep bearing No.AP-20-V-4224/offending vehicle was insured with the appellant/Insurance Company *vide* Ex.B-2 – policy of insurance and it was valid on the date of occurrence of accident. No premium was paid to cover the risk of the passengers travelling in the said jeep. The Tribunal, while dealing with the subject matter of the O.P., had relied on some decisions. In **the United India Insurance Company Limited, Mancherial vs. Lingampalli Mondi & others [2002 (3) ALD 670]**, this Court held as follows:

> ***"Liability of Insurance Company – Plea of the Insurance Company that it is not liable since the deceased was travelling***

> ***in jeep which was being misused as a taxi – though it is a violation of the conditions of the policy, the Insurance Company is still liable to pay compensation. However the Company is entitled to recover it from the insurer."***

Ex.B-1 is the proposal form. It indicates violation of the conditions on the part of the driver and owner of the offending vehicle.

6. As regards the direction given by the Tribunal to the appellant/Insurance Company to pay the compensation to the claimant at the first instance and then, recover the same from the owner of the offending vehicle, it is apt to refer to the decision of the Apex Court in **Manuara Khatun and others Vs. Rajesh Kumar Singh and others**[1], wherein the Apex Court directed the insurer/Insurance Company to deposit the compensation awarded at the first instance and then, recover the same from the owner of the offending vehicle. In view of the said decision of the Apex Court, the direction given to the appellant/Insurance Company in the impugned order holds good. The appellant/Insurance Company is entitled to recover the amount deposited by it before the Tribunal towards compensation from respondent No.3 herein/owner of the offending vehicle in the same proceedings by filing an Execution Application. The appeal is devoid of merit and is liable to be dismissed.

7. Accordingly, the appeal is dismissed. There shall be no order as to costs.

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[1] 2017 ACJ 1031

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

DR.JUSTICE SHAMEEM AKTHER

Date : 24.07.2018
AMD

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