THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1047 of 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-Insurance Company aggrieved by the order dated 20.01.2006 in M.V.O.P.No.736 of 2002 on the file of the Motor Accident Claims Tribunal-cum-Principal District Judge, Cuddapah (for short 'the Tribunal').

2. Heard the learned counsel for the appellant-Insurance Company and perused the record. There is no representation on behalf of the respondents-claimants. This appeal pertains to the year 2006. Hence, it can be disposed of on merits.

3. Learned counsel for the appellant-Insurance Company would contend that the offending vehicle bearing No.AP-04-B-4650 was used for hire purpose. There is no coverage of policy. The Tribunal directed the appellant-insurance company to pay the compensation amount at first instance and recover the same from the owner of the offending vehicle, which is unsustainable under law and ultimately prayed to allow the appeal by setting aside the order under challenge.

4. There is no dispute with regard to the death of Moillakalva Sreeramulu in a motor accident that occurred on 10.05.2002 due to the rash and negligent driving of the driver of the jeep bearing No.AP-04-B-4650. There is also no dispute with regard to the assessment and award of compensation to the

claimants. The dispute is only with regard to the direction given by the Tribunal i.e., pay and recover.

5. As per Ex.B1-copy of insurance policy, the offending jeep bearing No.AP-04-B-4650 was insured with the appellant-Insurance Company and the insurance was valid on the date of accident. When the deceased-Moillakalva Sreeramulu was travelling in the jeep bearing No.AP-04-B-4650, he succumbed to the injuries sustained by him in a motor accident occurred on 10.05.2002 due to the rash and negligent driving of the driver of the said jeep. Admittedly, the policy is an act policy. There is no comprehensive coverage of risk of persons travelling in the offending jeep. The Tribunal after an elaborate discussion held that there is violation of terms and conditions of policy of insurance and 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.

6. Now the point to be answered is, whether the Tribunal justified in directing the insurance company to pay the compensation to the claimants, who are the dependants of the deceased. In a recent decision of the Apex Court in *Manuara Khatun and others Vs. Rajesh Kumar Singh and others*[1], it was held that when there was violation of terms and conditions of policy of insurance, insurer of Tata Sumo was directed to deposit the compensation at the first instance and then recover the same from the owner of the vehicle. In the instant case, the respondents/claimants in this appeal are similarly placed. The deceased is a third party and he is a gratuitous passenger in the

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jeep. Hence, there is no infirmity in the direction given by the Tribunal. There are no merits in the appeal.

7. In the result, the appeal is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed. There shall be no order as to costs.

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Dr. SHAMEEM AKTHER, J

Date: 25.07.2018
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