

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3272 OF 2008

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/the New India Assurance Company Limited challenging the order, dated 07.12.2005, passed in O.P.No.667 of 2003 by the learned Additional Metropolitan Sessions Judge for the trial of Jubilee Hills Car Bomb Blast Case – cum – Additional Family Court – cum – XXIII Additional Chief Judge, (Motor Accident Claims Tribunal), Red Hills, Nampally at Hyderabad.

2. Heard the submissions of the learned Standing Counsel appearing for the New India Assurance Company Limited representing the appellant and the learned counsel for respondent Nos.1 to 9/claimants, and perused the material available on record.

3. Learned Standing Counsel for the New India Assurance Company representing the appellant would mainly contend that the owner and driver of the jeep bearing No.AP 36 V 3362 have violated the terms and conditions of the policy of insurance; that the jeep bearing No.AP 36 V 3362 (offending vehicle) was plied as a private vehicle and so the gratuitous passengers travelling in the said jeep have no coverage of risk under Ex.B-1 - policy of insurance; that the Court below erroneously tagged the liability against the appellant/Insurance Company also and ultimately,

prayed to set aside the impugned order and allow the appeal as prayed for.

4. On the other hand, learned counsel for respondent Nos.1 to 9/claimants would contend that the Court below is justified in awarding a compensation of Rs.3,35,060/- with proportionate costs and interest at the rate of 6% per annum and also justified in directing the appellant and owner of the jeep bearing No.AP 36 V 3362 to pay the compensation jointly and severally, and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel on both sides, the point that arises for determination is:

“Whether the Tribunal is justified in directing the appellant/Insurance Company to pay the compensation along with the owner of the jeep bearing No.AP 36 V 3362 jointly and severally?”

6. **POINT:-** There is no dispute with regard to the death of the deceased Smt Beepasha in a motor accident caused on 06.09.2002 due to the rash and negligent driving of the driver of the jeep bearing No.AP 36 V 3362. The only dispute is with regard to coverage of risk for the inmates of the offending jeep bearing No.AP 36 V 3362. Admittedly, there was policy of insurance under Ex.B-1. It was only an act policy of insurance. The Court below directed the appellant/Insurance Company and the owner of the jeep bearing No.AP 36 V 3362 to pay the awarded compensation jointly and severally. On this aspect, it is apt to refer to a decision of the Apex Court in **Manuara Khatun and others Vs. Rajesh**

Kumar Singh and others¹, 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 case of gratuitous passenger travelling in a private vehicle.

7. Admittedly, the deceased was a gratuitous passenger travelling in the jeep bearing No.AP 36 V 3362. There is no coverage of risk of the gratuitous passenger under Ex.B-1 – policy of insurance. For that, the claimants should not suffer. Admittedly, the offending jeep is a private vehicle meant for travelling. In the facts and circumstances, the case on hand is similar to the facts and circumstances of the case referred above 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. A similar direction can be given in this case also.

8. Accordingly, this appeal is allowed in part modifying the order, dated 07.12.2005, passed in O.P.No.667 of 2003 by the Court below directing the appellant/Insurance Company to deposit the compensation awarded at the first instance and then, recover the same from the owner of the offending jeep bearing No.AP 36 V 3362 i.e., respondent No.10 herein, in the very same proceedings before the Tribunal by filing an Execution Application. There is no change with regard to the other conditions imposed by the Court below. There shall be no order as to costs.

¹ 2017 ACJ 1031

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

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Date : 13.08.2018
AMD



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