THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3256 of 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity), is filed by the appellant-the National Insurance Company Limited, challenging the Order, dated 28.03.2005, passed in O.P.No.130 of 2003 by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Chittoor at Madanapalle ('the Tribunal', for brevity).

2. Heard both sides. Perused the record.

3. The learned Standing Counsel for the appellant-Insurance Company would contend that the deceased-B.Papi Naidu was travelling in the offending tractor bearing registration No.KA-07-T-6667 as an unauthorised passenger. The driver of the offending tractor had no valid driving licence to drive the same as on the date of subject accident. The Tribunal erroneously directed the appellant-Insurance Company to deposit the amount of compensation awarded at the first instance and then recover the same from the owner of the Tractor bearing registration No.KA-07-6667 and ultimately prayed to allow the appeal by setting aside the order under challenge.

4. On the other hand, the learned counsel for the respondents 1 and 2/claimants would contend that the Tribunal had taken all the relevant factors into consideration and granted a compensation of Rs.73,000/- with interest @ 9% per annum

from the date of petition till realisation, which is just and reasonable. There is no violation of terms and conditions of Ex.B.1-Insurance policy. There are no circumstances to interfere with the impugned order and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. It is not in dispute that the deceased-B.Papi Naidu died in the subject accident occurred on 19.05.2001, due to rash and negligent driving of the driver of the offending tractor bearing registration No.KA-07-T-6667. The dispute is with regard to the fastening of liability to pay the compensation against the appellant-Insurance Company, when the driver of the offending tractor was not holding a valid driving licence to drive the same as on the date of subject accident and when the deceased was travelling as a gratuitous passenger in the offending tractor.

6. Admittedly, the offending tractor bearing registration No.KA-07-T-6667 was meant for agricultural use. It is not a commercial vehicle. As per the evidence on record, the deceased-B.Papi Naidu was an unauthorised passenger on the offending tractor at the time of subject accident and his death. Further, as per the evidence on record, the driver of the offending tractor was not holding a valid driving licence to drive the same as on the date of the subject accident. There is a specific finding of the Tribunal to that effect. However, as the offending tractor was validly insured with the appellant-Insurance Company as on the date of subject accident under Ex.B.1-Insurace policy, the Tribunal 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 tractor.

7. 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 decision in Asha Rani's case (1 supra) is prospective in nature. The impugned order was passed by the Tribunal on 28.03.2005, i.e., after the decision rendered by the Apex Court in Asha Rani's case (1 supra) on 17.08.2001. In the instant case, the deceased was travelling as a gratuitous passenger in the offending tractor bearing registration No.KA-07-T-6667, which is meant for agricultural use. Moreover, there is also evidence of R.W.1 to the effect that the driver of offending tractor was not holding a valid driving licence to the drive the same as on the date of accident. Viewed from any angle, no liability can be fastened against the appellant-Insurance Company to pay the compensation to the respondents 1 and 2/claimants, in view of the law laid down by the by the Apex Court in the aforementioned decisions and the Tribunal ought not have directed the appellant-Insurance Company to deposit the

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

compensation at the first instance and then recover the same from the owner of the offending tractor. Therefore, the impugned order is liable to be set aside.

8. Accordingly, the appeal is allowed and the impugned Order, dated 28.03.2005, passed in O.P.No.130 of 2003 by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Chittoor at Madanapalle, 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

12th September, 2018

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