THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2183 of 2005

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 17.09.2002 in O.P.No.598 of 1999 on the file of the Motor Accident Claims Tribunal-cum-I Additional District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad (for short 'the Tribunal').

2. Heard the learned Standing Counsel for appellant-Insurance Company, learned counsel for 1st respondent and perused the record. In spite of service of notice on 2nd respondent (owner), there is no representation on his behalf.

3. Learned counsel for the appellant-Insurance Company would contend that the Tribunal relying on the decision rendered in *New India Assurance Company v. Satpalsingh and others*[1] on 02.12.1999, directed the Insurance Company to pay the compensation to the claimant. He also contended that in view of the decisions in *M/s. National Insurance Company Limited vs. Baljit Kaur and others*[2] rendered on 06.01.2004 and in *New India Assurance Company Limited v. Asha Rani and others*[3] rendered on 03.12.2002, and since the impugned order was passed before the judgment in *Asha Rani's* case (3 supra), he sought a direction to recover the compensation from the owner of the offending vehicle in the event of payment made

[1] 2000 SAR (Civil) 140
[2] AIR 2004 SC 1340
[3] 2003(2) SCC 223

by the appellant-insurance company. He also contended that the rate of interest granted @ 9% per annum is excessive and ultimately, prayed to reduce the same.

4. Learned counsel for the 1st respondent-claimant would contend that the Tribunal justified in granting compensation against the Insurance Company relying on the decision rendered in *Satpal Singh* (1 supra). There is nothing to take a different view and ultimately prayed to dismiss the appeal.

5. Learned Standing Counsel has not disputed with regard to the assessment and award of compensation of Rs.50,000/- to the respondent No.1/claimant by the Tribunal for the injuries sustained by him in a motor vehicle accident occurred on 20.05.1999 due to rash and negligent driving of driver of lorry bearing registration No.APT 9691. The only dispute between the parties is as to whether a direction to pay and recover can be given as contended on behalf of the appellant-Insurance Company.

6. As per the decision rendered by the Apex Court in *Asharani's* case (3 supra) on 03.12.2002, a gratuitous passenger travelling in a goods vehicle is not entitled to claim compensation from the insurer of the offending vehicle, and the decision rendered in *Satpal Singh's* case (1 supra) was overruled in the said decision. But, in *Baljit Kaur's* case (2 supra), the Hon'ble Apex Court observed that the decisions rendered are prospective in nature. In the instant case, there is

ample evidence on record to hold that the claimant was a gratuitous passenger in the offending lorry. A finding to that effect was rightly recorded by the Tribunal basing on the evidence on record. There was no coverage of risk of gratuitous passengers under the policy of insurance marked as Ex.B1. In view of the decision rendered in *Satpal Singh's* case (1 supra), the Tribunal was pleased to pass the impugned order dated 17.09.2002, i.e., before the judgment rendered by the Hon'ble Apex Court in *Asharani's* case (3 supra), directing the appellant-Insurance Company to pay the compensation jointly and severally along with the owner of the offending vehicle. Since the decision in *Satpal Singh's* case (1 supra) was overruled in *Asharani's* case (3 supra), a gratuitous passenger is not entitled to claim compensation from the insurer of the offending vehicle. As the decision in *Asharani's* case (3 supra) is prospective in nature, the appellant-insurance company is directed to deposit the compensation awarded by the Tribunal, as modified below, at first instance and then recover the same from the owner of the offending vehicle in the same proceedings before the Tribunal by filing an Execution Petition.

7. As regards rate of interest, it is apt to refer to the decision of the Apex Court in Dharampal Vs. State Road Transport Corporation[4], wherein, the Apex Court awarded interest @ 7.5% per annum on the amount awarded as compensation. In the instant case, the Tribunal granted interest @ 9% per annum, which is excessive.

[4] MANU SC 7680 2008

8. In the result, the appeal is partly allowed modifying the order dated 17.09.2002 passed by the Tribunal in O.P.No.598 of 1999 reducing the rate of interest awarded by the Tribunal on the compensation awarded from 9% per annum to 7.5% per annum from the date of petition till the date of deposit, and further directing the Insurance Company to deposit the compensation at first instance and recover the same from the owner of the vehicle i.e., respondent No.2 herein, in the same proceedings before the Tribunal.

The Miscellaneous Petitions, if any, pending shall stand closed. No costs.

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Dr. SHAMEEM AKTHER, J

07.08.2018
ssp