THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3305 of 2012

JUDGMENT:-

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant-United India Insurance Company Limited, challenging the Order, dated 03.01.2006, passed in M.V.O.P.No.310 of 2002, by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Chittoor ('the Tribunal', for brevity).

2. Heard the learned counsel for both sides and perused the record.

3. The learned Standing Counsel for the appellant-Insurance Company would contend that the Tribunal had granted excess compensation of Rs.28,000/- with interest @ 9% per annum from the date of petition till realisation, as against a claim of Rs.1,00,000/-. The 1st respondent-claimant was a gratuitous passenger in the offending lorry bearing registration No.AP-26-T-549. The Tribunal erroneously tagged the liability against the Insurance Company by ignoring the decision of the Apex Court in New India Assurance Company Limited Vs. Asha Rani and others[1]. In the decision rendered by the Apex Court in National Insurance Company Limited Vs. Baljit Kaur and others[2], the application of the decision of the Apex Court in Asha Rani's case (1 supra) has been clarified. Since the 1st

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

respondent-claimant was travelling as a gratuitous passenger in the offending lorry which is a goods vehicle, the Tribunal ought not have tagged the liability against the Insurance Company and ultimately prayed to set aside the Order under challenge.

4. On the other hand, the learned counsel for the 1st respondent-claimant would contend that the Tribunal justified in not applying the decision of the Apex Court in Asha Rani's case (1 supra) to the facts of the case on hand, , since the subject accident occurred in the year 1997, i.e., not prior to the year 1994. The deceased was travelling in the offending vehicle as owner of the groundnut bags. In view of the decision of the Apex Court in Baljit Kaur's case (2 supra), the Insurance Company is liable to pay compensation and ultimately prayed to dismiss the appeal by confirming the Order under challenge.

5. In view of the above rival contentions, the points that arise for determination in this appeal are as follows:

1. Whether the Tribunal justified in granting compensation of Rs.28,000/- with interest at the rate of 9% per annum from the date of petition till realisation, in favour of the claimant?

2. Whether the impugned judgment and decree passed by the Court below is liable to be set aside.

Point No.1:-

6. The Tribunal, while dealing with the subject matter, held that on 18.10.1997, the 1st respondent-claimant was travelling in the offending lorry bearing registration No.AP-26-T-549 and suffered injuries due to the rash and negligent driving of the

driver of the said lorry. The Tribunal, after analysing the entire evidence on record, awarded an amount of Rs.20,000/- for the injuries, Rs.5,000/- towards medical expenses and Rs.3,000/- towards extra-nourishment. In all, the Tribunal granted a compensation of Rs.28,000/- with interest @ 9% per annum from the date of petition till realisation. The subject accident occurred on 18.10.1997. The earning capabilities of the persons as on the date of accident were not much. Therefore, The Tribunal rightly assessed and granted the said compensation in favour of claimants and this Court do not see any reason to vary the same.

Point No.2:-

7. As per the oral and documentary evidence on record, the 1st respondent-claimant was travelling in the offending lorry bearing registration No.AP-26-T-549 on the date of accident. As per the evidence on record, the offending lorry was validly insured with the appellant-Insurance Company as on the date of accident. It was contended before the Tribunal that the 1st respondent-claimant, along with others, boarded the offending lorry with 30 kgs of sundry eatable items at Chittoor to go to his village M.Bandapalle. As per the evidence on record, the deceased was not travelling in the offending lorry as owner of goods and he was a gratuitous passenger travelling in the offending lorry.

8. It is apt to refer the decision of the Apex Court in Asha Rani's case (1 supra), 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. As per the decision of the Apex Court in in Baljit Kaur's case (2 supra), the decision of the Apex Court in Asha Rani's case (1 supra) is prospective in nature. The impugned order was passed by the Tribunal on 30.09.2004, i.e., after the decision rendered by the Apex Court in Asha Rani's case (1 supra) on 17.08.2001.

9. In support of his contentions, the learned counsel for the claimants relied on the decision of the Apex Court in Manuara Khatun and others Vs. Rajesh Kumar Singh and others[3]. In the cited case, the deceased was travelling in a Tata Sumo. The insurance policy of the said vehicle is an 'act Policy' and it is a passenger vehicle. In view of the same, the Apex Court directed the insurer to satisfy the award at the first instance and then recover the same from the insured in the same proceedings by filing Execution Application before the Tribunal. In the instant case, the deceased was a gratuitous passenger travelling in the offending lorry, which is a goods vehicle but not in a passenger vehicle. Viewed from any angle, in view of the decisions rendered by the Apex Court in all the three decisions cited above, no direction can be given to the Insurance Company to pay the compensation at the first instance and then recover the same from the owner of the offending vehicle. Under these circumstances, the Tribunal ought not have passed the

[3] (2917) 4 Supreme Court Cases 796

impugned order awarding compensation against the Insurance Company. Therefore, the impugned order is liable to be set aside.

10. Accordingly, the appeal is allowed and the impugned Order, dated 03.01.2006, passed in M.V.O.P.No.310 of 2002 by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Chittoor, against the appellant-Insurance Company is set aside. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

____
Dr. SHAMEEM AKTHER, J

______August, 2018
Bvv