

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.2045 AND 2049 OF 2007

COMMON JUDGMENT:

M.A.C.M.A.No.2045 of 2007, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/claimant aggrieved by the grant of compensation of Rs.36,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realisation, as against a claim of Rs.1,00,000/-, by the learned Chairman, Motor Accident Claims Tribunal – cum – VI Additional District Judge (FTC), Anantapur at Gooty (for short, “the Tribunal”) *vide* order, dated 15.06.2007, passed in O.P.No.604 of 2005 whereas M.A.C.M.A.No.2049 of 2007, under Section 173 of the Motor Vehicles Act, is filed by the appellant/claimant aggrieved by the grant of compensation of Rs.39,500/- with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realisation, as against a claim of Rs.1,00,000/-, by the Tribunal *vide* order, dated 15.06.2007, passed in O.P.No.606 of 2005.

2. Since the facts of the case, issues involved and the accident in both these appeals are similar, both the appeals are being disposed of by way of this common judgment.

3. Heard the submissions of the learned counsel appearing for the appellants/claimants, learned Standing Counsel appearing for the National Insurance Company Limited appearing for respondent No.2, and perused the material on record.

4. Learned counsel for the appellants/claimants would contend that the Tribunal granted Rs.36,000/- and Rs.39,500/- as against

their claims of Rs.1,00,000/- each in O.P.No.604 of 2005 and O.P.No.606 of 2005 respectively, which is meagre; that the Tribunal erred in holding that the claimants were travelling as gratuitous passengers in Tata Van bearing No.AP-04-U-6765 and ultimately, prayed to enhance the compensation and allow the appeals as prayed for.

5. On the other hand, learned Standing Counsel appearing for the National Insurance Company Limited appearing for respondent No.2 would contend that the Tribunal had taken all the factors into consideration and granted compensation of Rs.36,000/- and Rs.39,500/- as against the claims of Rs.1,00,000/- each in O.P.No.604 of 2005 and 606 of 2005 respectively along with proportionate costs and interest at the rate of 7.5% per annum, which is just and reasonable; that there are no circumstances to interfere with the impugned judgments and ultimately, prayed to dismiss the appeals.

6. There is no dispute with regard to the claimants suffering injuries in a motor accident that occurred on 18.02.2004 due to the rash and negligent driving of the driver of Tata Van bearing No.AP-04-U-6765. The contention of the learned counsel for the claimants is that the claimants were hamalies engaged for loading and unloading groundnut bags. There is specific evidence of P.W.1 in both the O.Ps to that effect. However, there is no mention either in Ex.A-1 – certified copy of F.I.R or Ex.A-3 – certified copy of charge sheet in both the O.Ps to show that the claimants were working as hamalies in the offending van. Though the claimants stated that they were hamalies, they did not substantiate the same

by any evidence. Basing on the evidence and the documents produced, the Tribunal held that the claimants were travelling as unauthorised passengers in Tata Van bearing No.AP-04-U-6765 and that as per Ex.B-1, there is no coverage of risk of gratuitous passengers. The Tribunal relied on a decision in **National Insurance Company Limited vs. B.Subbhayamma and others** reported in 2005 ACJ 721. Further, in view of the decision in **New India Assurance Company Limited, Anantapur vs. Asha Rani and others** reported in 2003 ACJ P.1, gratuitous passengers are not entitled for compensation from the insurer, but they are entitled for compensation from the insured i.e., owner of the offending vehicle. Taking such a view by the Tribunal cannot be faulted. There is nothing to take a different view. As far as the assessment and grant of compensation of Rs.36,000/- and Rs.39,500/- are concerned, they are based on the injuries and consequences arose therefrom. The Tribunal is justified in granting such compensation. There are no circumstances to vary the same. The submissions made on behalf of the claimants are unsustainable in law. The appeals are devoid of merit and are liable to be dismissed.

7. Accordingly, both the appeals are dismissed. There shall be no order as to costs.

8. Miscellaneous petitions pending, if any, in these appeals shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 27.08.2018
AMD

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



M.A.C.M.A.Nos.2045 AND 2049 OF 2007

Date: 27.08.2018

AMD