

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3242 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/the National Insurance Company Limited challenging the order, dated 18.06.2005, passed in M.A.T.O.P.No.384 of 1999 by the learned Chairman, Motor Accident Claims Tribunal – cum - IV Additional District Judge (III Fast Track Court), Khammam.

2. Heard the submissions of the learned counsel appearing for the appellant/the National Insurance Company Limited. Though the matter is posted under the caption “For Orders”, there is no representation for respondent Nos.1 to 4/claimant Nos.1 to 4. It appears that respondent Nos.1 to 4/claimant Nos.1 to 4 have no interest to pursue the matter. However, the matter can be disposed of basing on the material available on record. Perused the material on record.

3. Learned counsel for the appellant/the National Insurance Company Limited would contend that as against a claim of Rs.2,00,000/-, the Tribunal granted compensation of Rs.1,80,000/- with costs and interest at 9% per annum from the date of petition till the date of realization and the same is excessive; that the deceased Boda Ramulu was a gratuitous passenger in Tipper bearing No.AP-31T-9162 and there is no coverage of risk of the gratuitous passengers under Ex.B-1 – policy of insurance and there is evidence of R.W.1 to substantiate the same, but the Tribunal did not consider the same and erroneously held that the deceased Boda Ramulu was the owner of the goods;

that the deceased Boda Ramulu was only a gratuitous passenger travelling by the offending tipper and hence, the Tribunal ought not have tagged the liability upon the appellant/Insurance Company and ultimately, prayed to set aside the award passed against the appellant/Insurance Company and allow the appeal.

4. In view of the submissions made by the learned Standing Counsel for the appellant/the National Insurance Company Limited, the points that arise for determination are:

- “1. Whether the Tribunal is justified in granting a compensation of Rs.1,80,000/- with interest at 9% per annum?”*
- 2. Whether the deceased Boda Ramulu was a gratuitous passenger travelling in the offending Tipper bearing No.AP-31T-9162? and*
- 3. Whether the impugned award passed against the appellant/Insurance Company is liable to be set aside?”*

5. **POINT No.1:-**

While dealing with the subject matter, the Tribunal held that the deceased Boda Ramulu was 35 years old and considering his age, occupation and earning capabilities, granted an amount of Rs.1,80,000/- with costs and interest at 9% per annum from the date of petition till the date of realization. For the death of a man of 35 years old, granting compensation of Rs.1,80,000/- with costs and interest at 9% per annum is not excessive. So, no interference of this Court is warranted on this aspect.

6. **POINT Nos.2 & 3:-**

P.Ws.1 and 2 have stated that the deceased Boda Ramulu was travelling by the offending Tipper bearing No.AP-31T-9162 on 31.08.1998 around 11:00 P.M. with vegetables. There is also another passenger who was also travelling with the vegetable load.

P.W.2 – Gugulothu Kaika stated that the deceased Boda Ramulu and one Azmeera Veerya, who were vegetable vendors, stopped the offending tipper and boarded it with their vegetable bags. She also deposed about the occurrence of the accident and the death of the deceased Boda Ramulu on the spot in the subject accident. Ex.A-1 is the certified copy of F.I.R. Ex.A-2 is the certified copy of charge sheet wherein there is no mention with regard to the deceased Boda Ramulu travelling with vegetable bags in the offending tipper. Had the deceased Boda Ramulu travelled with vegetable bags, the same would have been mentioned in F.I.R., charge sheet and also in the scene of offence panchanama. No copy of the inquest panchanama of the deceased Boda Ramulu was filed before the Tribunal to substantiate that the deceased Boda Ramulu was travelling with vegetable bags. There is no mention of the name of vegetables the deceased Boda Ramulu was carrying. More over, the time of accident was 11:00 P.M. on 31.08.1998. At that time, no person will travel with vegetable bags. It was an empty lorry. There is no single document to substantiate the same. It appears that P.W.2 was pressed into service to state that the deceased Boda Ramulu was travelling with vegetable bags. Without there being any panchanama or any criminal case record, it is difficult to accept that the deceased Boda Ramulu was travelling with vegetable bags. Under these circumstances, the Tribunal ought not have recorded a finding that the deceased Boda Ramulu was the owner of the goods, which is erroneous. Therefore, it is held that the deceased Boda Ramulu was a gratuitous/paid passenger travelling by the offending Tipper bearing No.AP-31T-9162. Ex.B-1 is the copy of policy of insurance. According to the oral evidence of R.W.1 and Ex.B-1 – copy of policy of insurance, there was no

insurance covering the risk of gratuitous passengers travelling by the offending Tipper bearing No.AP-31T-9162. There is evidence of R.W.1 to substantiate the same.

7. It is apt to refer to a decision rendered in **New India Assurance Company Limited v. Asha Rani and others**¹ wherein the deceased travelled in a goods vehicle and the Hon'ble Supreme Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants. The facts and circumstances of the instant case are similar to the facts and circumstances of the case in **New India Assurance Company Limited** (referred supra). Under these circumstances, the award passed by the Tribunal against the appellant/Insurance Company is liable to be set aside.

8. Accordingly, this appeal is allowed setting aside the order, dated 18.06.2005, passed in M.A.T.O.P.No.384 of 1999 by the Tribunal against the appellant/Insurance Company only. There shall be no order as to costs.

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

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Date : 18.09.2018
AMD

¹ 2003(2) SCC 223

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