THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3166 of 2007

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity) is filed by the appellant/National Insurance Company Limited, challenging the order, dated 11.08.2006, passed in M.O.P.No.101 of 2005, by the Chairman, Motor Accident Claims Tribunal-cum-IX Additional District Judge, Visakhapatnam ('the Tribunal', for brevity).

2. Heard the learned Standing Counsel for the appellant-Insurance Company, the learned counsel for the respondents 1 to 3/claimants and perused the record.

3. The learned Standing Counsel for the appellant-Insurance Company would submit that the deceased was carrying a Vinayaka idol in the offending Tractor and Trailer bearing registration Nos.AHK 4897/AP-31-T-9240 and in the said process, he sustained injuries and succumbed to the same when the wheels of the offending vehicle ran over the deceased. The deceased was an unauthorised/gratuitous passenger. There is no coverage of risk of the deceased under the insurance policy. The Tribunal erroneously directed the appellant-insurance company to pay compensation of Rs.2,91,000/- to the respondents 1 to 3/claimants at the first instance and then recover the same from the owner of the offending vehicle and ultimately prayed to allow the appeal as prayed for.

4. On the other hand, the learned counsel for the respondents 1 to 3/claimants would submit that the Tribunal had rightly assessed and

awarded the compensation to the respondents 1 to 3/claimants. The Tribunal had also rightly tagged the liability against the owner and the insurer of the offending vehicle. There is no infirmity and there are no circumstances to interfere with the impugned order and ultimately prayed to dismiss the appeal by confirming the Order under challenge.

5. The learned counsel for the 4th respondent would contend that an amount of Rs.346/- was paid towards additional premium to cover the risk of passengers while using the offending vehicle for private purposes. Therefore, the Tribunal had rightly tagged the liability on the appellant-insurance company and ultimately prayed to dismiss the appeal.

6. The assessment, calculation and award of compensation of Rs.2,91,000/- by the Tribunal in favour of the respondents 1 to 3/claimants is not in dispute. The appellant-insurance company is only disputing the direction given to it by the Tribunal to pay the compensation to the respondents 1 to 3/claimants at the first instance and then recover the same from the owner of the offending vehicle.

7. Copy of policy of insurance is marked as Ex.B.1. In the said document, there is no mention as to coverage of risk of the persons travelling by the offending vehicle. As per the material placed on record, the deceased was carrying Vinayaka idol in the offending vehicle for 'nimajjan' and in that process, he succumbed to the injuries suffered by him due to rash and negligent driving of the driver of the offending vehicle. Since there is no mention in Ex.B.1-insurance policy as to the coverage of risk of persons travelling by

the offending vehicle, no liability can be tagged against the appellant-insurance company. It is contended by the learned counsel for the 4th respondent that an amount of Rs.346/- was paid towards additional premium for using the offending vehicle for private purposes. The said payment would not cover the risk of unauthorised/gratuitous passengers travelling in the offending vehicle. Under these circumstances, the direction given by the Tribunal to the appellant-insurance company to pay the compensation to the respondents 1 to 3/claimants at the first instance and then recover the same from the owner of the offending vehicle is liable to be set aside.

8. In the result, the appeal is allowed and the order, dated 11.08.2006, passed against the appellant-Insurance Company in M.O.P.No.101 of 2005, by the Chairman, Motor Accident Claims Tribunal-cum-IX Additional District Judge, Visakhapatnam, is set aside. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

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Dr. SHAMEEM AKTHER, J

02nd July, 2018
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