THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3506 of 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity) is filed by the appellants-claimants, challenging the order, dated 19.09.2005, passed in M.V.O.P.No.365 of 2002, by the Motor Accident Claims Tribunal-cum-IV Additional District Judge (FTC), Prakasam at Ongole ('the Tribunal', for brevity), whereby, the claim petition of the appellant-claimant claiming a compensation of Rs.3,00,000/- for the death of the deceased-Venkateswarlu in the subject accident occurred on 22.04.2002 was allowed by the Tribunal, against respondent No.1 only, by dismissing the claim petition against the 2nd respondent-National Insurance Company Limited.

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-claimants would contend that the offending lorry bearing registration No.AP-26-U-3436 was validly insured with the 2nd respondent-Insurance Company as on the date of the subject accident. Hence, a direction to the 2nd respondent-Insurance company to pay the compensation awarded at the first instance and then recover from the owner of the offending lorry can be given. In support of his contentions, the learned counsel had relied on a decision of the Apex Court in Shivaraj Vs. Rajendra and another[1].

4. On the other hand, the learned Standing Counsel for the 2nd respondent-Insurance company would contend that the deceased-Venkateswarlu was a Head Constable and he was travelling in the

[1] Decided on 05.09.2018 in Civil Appeal Nos.8278-8279 of 2018 (arising out of SLP (C) Nos.1116-1117/2018)

offending lorry bearing registration No.AP-26-U-3436, which is a goods vehicle, on the date of the subject accident. There was no coverage of the risk of the passengers travelling in the offending lorry bearing registration No.AP-26-U-3436 under Ex.B.1-policy of insurance. The Tribunal rightly dismissed the claim against the 2nd respondent-Insurance Company. There are no circumstances to interfere with the order under challenge 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 a direction to pay the compensation at the first instance and then recover the same from the owner of the offending lorry bearing registration No.AP-26-U-3436 can be given to the 2nd respondent-Insurance Company?
2. Whether the order under challenge is sustainable or liable to be set aside.

<u>Points:</u>

6. In Shivaraj's case supra, the appellant therein was travelling by a tractor bearing registration No.KA-15-T-2011 as a coolie. He succumbed to the injuries sustained by him in an accident occurred due to rash and negligent driving of the driver of the said tractor. Under those circumstances, the Apex Court directed the insurer of the said tractor to pay the compensation awarded at the first instance and then recover the same from the owner of the said tractor. But in the case on hand, the deceased-Venkateswarlu was travelling in the offending lorry bearing registration No.AP-26-U-3436, which is a goods vehicle and not a passenger vehicle. Though there is evidence of P.W.1 (wife of the deceased) that her husband (the deceased) was travelling in the offending lorry bearing registration No.AP-26-U-3436 on the date of the subject accident along with goods, but as per the

documents placed on record, though there are goods in the offending lorry, the deceased-Venkateswarlu was not the owner of the goods. Further, there is no criminal case record to show that the deceased-Venkateswarlu was travelling in the offending lorry as owner of goods. The Tribunal, while dealing with this aspect, held that the deceased was a gratuitous passenger and was not authorised to travel by the offending lorry bearing registration No.AP-26-U-3436 as passenger. Further, the Tribunal, relying on the evidence of R.W.1-employee of the 2nd respondent-Insurance Company and Ex.B.1-Insurance policy, held that there was no coverage of the risk of the deceased under Ex.B.1-Insurance policy and ultimately dismissed the claim against the 2nd respondent-Insurance Company. Hence, the facts of the Shivaraj's case supra relied by the learned counsel for the appellants-claimants are quite distinct with the facts of the case on hand.

7. It is apt to refer to the decision of the Apex Court in New India Assurance Company Limited Vs. Asha Rani and others[2], wherein, the deceased travelled in a goods vehicle as a gratuitous passenger and in those circumstances, the Apex Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants. The said decision is squarely applicable to the facts and circumstances of the instant case. The Tribunal rightly dismissed the claim against the 2nd respondent-Insurance Company. This Court finds no infirmity in the said finding of the Tribunal. There is nothing to take a different view. There are no circumstances to interfere with the impugned order. The appeal is devoid of merit and is liable to be dismissed.

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[2] 2003 (2) SCC 223

8. In the result, the appeal is dismissed. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

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Dr. SHAMEEM AKTHER, J

12th October, 2018
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