THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2464 OF 2007

JUDGMENT:

This appeal is filed by the appellants-claimants under Section 173 of the M.V. Act, aggrieved by the order, dated 07.06.2007 in M.V.O.P.No.315 of 2004, passed by the Motor Accident Claims Tribunal-cum- V Additional District Judge, Kurnool at Nandyal, wherein compensation of Rs.1,58,000/- was granted to the appellants-claimants against the first respondent-owner of the offending vehicle and the claim petition against respondent No.2-insurance company was dismissed.

2. Heard the learned counsel for the appellants-claimants, the learned standing counsel for the respondent-insurance company and perused the record. The appeal was dismissed for default against respondent No.1-owner vide order dated 11.7.2016.

3. Learned counsel for the appellants-claimants would submit that Ex.B1-insurance policy was in force on the date of the accident, and hence, the claimants are entitled to recover the compensation awarded from the insurer. In support of his contention, he relied on a decision in **MANUARA KHATUN AND OTHERS V RAJESH KUMAR SINGH AND OTHERS** [1], wherein it was held as follows (paras 17 and 22):

> "The facts of the case at hand are somewhat identical to the facts of the case mentioned supra because here also we find that the deceased were found travelling as 'gratuitous passengers' in the offending vehicle and it was for this reason, the insurance companies were exonerate. In *Saju P.Paul case* (National Insurance Co. Ltd. V Saju P.Paul (2013) 2 SCC 41)) also having held that the victim was 'gratuitous passenger', this Court issued directions against the insurer of the offending vehicle to

[1] (2017) 4 SCC 796

first satisfy the awarded sum and then to recover the same from the insured in the same proceedings.

Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that Respondent 3 United India Insurance Co. Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter Respondent 3 United India Insurance Co. Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending vehicle (Tata Sumo) Respondent 1 in these very proceedings by filing executing application against the insured."

4. On the other hand, learned standing counsel for the respondent-Insurance Company would contend that the subject policy is an act policy; that the deceased-Dudekula Dasthagiri, was a gratuitous passenger in offending vehicle viz. car bearing No.AP21C 9793, and hence, the insurer is not liable to pay compensation to the dependants of the deceased.

In support of his contention, he relied on a Division Bench decision of this Court in **BRANCH MANAGER, UNITED INDIA INSURANCE CO, LTD., KAMAREDDY, NIZAMABAD DISTRICT V KONDAKOTLA SAROJA AND OTHERS** [2], wherein it was held as follows (paras 9 and 10):

"The Insurance Company in its counter specifically denied its liability pleading that Act Policy has been issued to the vehicle which is hired to Eenadu Daily Newspaper against the policy conditions in which the deceased traveled as an unauthorized passenger at the time of accident. Therefore, the Insurance Company cannot be held liable.

In substantiation of the above plea, the Assistant of the Insurance Company is examined as R.W.1. He deposed that according to police report, about nine persons were traveling in the vehicle at the time of the accident. As per the policy conditions, if the persons traveling in the vehicle are unauthorized, then the Insurance Company is not liable to pay the compensation. He denied the suggestion that the deceased along with the other two friends of respondent No.1 (owner) went to Kamareddy on the work of respondent No.1 and they are not traveling as fare paid passengers and also denied the suggestion that only five passengers were traveling in the jeep but not nine passengers and that the deceased comes under 'third party'."

Ultimately, it was held in the above decision that once insurance company has not undertaken the liability by collecting extra premium for the passengers who travelled

[2] 2008 (5) ALD 288 (DB)

in the insured vehicle as gratuitous passengers, it cannot be held liable to pay the compensation and it is only the owner of the vehicle who is liable to satisfy the decree and pay compensation amount.

Relying on the aforesaid decision, the learned standing counsel for the respondent-insurance company would contend that as the deceased was only a gratuitous passenger in the offending vehicle and the policy of insurance was only an act policy, there is no coverage of risk of the deceased, and as such, the claimants-dependants of the deceased are not entitled to claim compensation from the insurance company, and that the Tribunal rightly dismissed the claim petition against the insurer and the same needs no interference by this Court.

5. Death of the deceased Dudekula Dasthagiri in a road accident that occurred on 21.12.2003 due to rash and negligent driving of driver of offending vehicle viz. car bearing No.AP21C 9793, is not disputed. The only dispute is with regard to liability of the insurance company to pay the compensation awarded by the Tribunal. As per the oral and documentary evidence, the deceased was a gratuitous passenger traveling by the offending vehicle which met with the accident, resulting in his death on 21.12.2003. The policy of insurance of the offending vehicle is only an act policy. Learned standing counsel for the insurance company relied on an unreported decision dated 06.12.2017 of the Apex Court rendered in Smt. *Shanthamma & another v. United India Insurance Company Limited & another* (Civil Appeal No.20927 of 2017) and contended that the directions given by the Apex Court to pay and recover in case of gratuitous passenger are only in

exercise of the jurisdiction of the Apex Court under Article 142 of the Constitution of India and the directions so given do not operate as precedent and this Court has no power to give such a direction. On perusal of the aforesaid decision, there is mention that the Hon'ble Supreme Court had exercised its jurisdiction under Article 142 of the Constitution of India and directed the insurer to pay the awarded amount at first instance and thereafter recover the same from the owner of the offending vehicle. However, in the decisions rendered by the Hon'ble Apex Court in *Saju P.Paul* case *{(2013) 2 SCC 41}* and in *Manuara Khatun's* case (2 supra), there is no mention that the Apex Court exercised its jurisdiction under Article 142 of the Constitution of India in directing the insurance company to satisfy the awarded amount in the first instance and thereafter recover the same from the owner of the offending vehicle. So, the decisions rendered by the Hon'ble Apex Court in *Saju P.Paul* case *{(2013) 2 SCC 41}* and in *Manuara Khatun's* case (2 supra) can be relied upon to determine the contentions raised by the parties as the deceased was a gratuitous passenger in the offending vehicle to meet the benevolent object of the Motor Vehicles Act, 1988.

6. Under these circumstances, the impugned order is modified and the respondent-Insurance Company is directed to pay the compensation awarded to the appellants-claimants. Thereafter, the respondent-Insurance Company would be entitled to recover the compensation amount so deposited, from the owner of the offending vehicle viz. car bearing No.AP21C 9793, i.e., 1st respondent herein, in the very proceedings before the Tribunal by filing execution application.

7. With the above direction, the Civil Miscellaneous Appeal is allowed as indicated above. The other terms of the impugned order remain unaltered. On such deposit, the appellants-claimants are entitled to withdraw the entire amount with accrued interest. No order as to costs of the appeal.

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

DR.SHAMEEM AKTHER, J

9th.07.2018
DRK

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