THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2709 OF 2005

JUDGMENT:

This appeal is filed by the appellant-Insurance Company under Section 173 of the M.V. Act, aggrieved by the order, dated 24.11.2004, in O.P.No.788 of 2001, passed by the Principal Motor Accident Claims Tribunal, Nalgonda, wherein compensation of Rs.2,32,860/- was granted to the claimant.

2. Heard both sides and perused the record.

3. Learned counsel for the appellant-Insurance Company would contend that the claimant is a gratuitous passenger in the lorry bearing No. AP 31 T 8499 and he suffered injury in the accident that occurred on 11.06.2001. The driver and owner of the vehicle violated the terms and conditions of the policy. The Tribunal held that the claimant is a gratuitous passenger in the offending lorry bearing No. AP 31 T 8499. The Tribunal granted compensation as mentioned above with interest at 9% p.a. The Tribunal directed the Insurance Company to deposit the said amount and thereafter, recover the same from the owner of the offending lorry bearing No. AP 31 T 8499, which is erroneous and prayed to set aside the same.

4. On the other hand, learned counsel for the claimant would contend that the Tribunal had rightly assessed the compensation and awarded the same. There are no circumstances to take a different view and ultimately, prayed to dismiss the appeal.

5. In view of submissions made by both sides, the point for consideration is whether the direction given by the Tribunal to pay and recover against the appellant-Insurance Company holds good?

6. It is apt to refer the decision of the Hon'ble Supreme Court in **NEW INDIA ASSURANCE COMPANY LIMITED V ASHA RANI AND OTHERS** [1], where the deceased was travelling in a goods vehicle, the Hon'ble Supreme Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants.

7. In the instant case, the claimant is a gratuitous passenger in the offending lorry bearing No. AP 31 T 8499. While traveling in the said vehicle as gratuitous passenger, the claimant suffered injuries. Therefore, the claimant is not entitled to claim compensation from the appellant-Insurance Company.

8. In view of the circumstances of the case, the order, dated 24.11.2004, in O.P.No.788 of 2001, passed by the Principal Motor Accident Claims Tribunal, Nalgonda, against the appellant-Insurance Company is set aside. Since the appellant-Insurance Company had deposited half of the decretal amount with interest thereon, it is not entitled to recover the same from the claimant. The appellant-Insurance Company is entitled to recover the same from the owner of the offending lorry bearing No. AP 31 T 8499 i.e., respondents 2 and 3 herein in these very proceedings before Tribunal by filing execution application against the insured.

9. Accordingly, the Appeal is allowed. No order as to costs. Miscellaneous petitions, if any pending in this appeal shall stand closed.

DR.SHAMEEM AKTHER, J

DATED: 21-06-2018
Hsd

[1] 2003(2) SCC 223