THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2107 OF 2006

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/claimant challenging the order, dated 04.07.2006, passed in O.P.No.253 of 2005 by the learned IV Additional District & Sessions Judge (Fast Track Court), Ranga Reddy District.

2. Heard the submissions of the learned counsel appearing for the appellant/claimant, the learned Standing Counsel appearing for the New India Assurance Company Limited appearing for respondent No.2 and perused the material available on record.

3. Learned counsel for the appellant/claimant would contend that the Tribunal erroneously dismissed the claim against respondent No.2/Insurance Company though there was valid policy of insurance under Ex.B-1; that the claimant was a gratuitous passenger travelling in the auto bearing No.AP 23V 4047 and the Tribunal ought to have directed respondent No.2/Insurance Company to deposit the compensation at the first instance and then, recover the same from the owner of the offending auto bearing No.AP 23V 4047. In support of the same, he relied on a decision reported in **Manuara Khatun and others Vs. Rajesh Kumar Singh and others**[1] wherein the Apex Court directed the insurer/Insurance Company to deposit the compensation awarded at the first instance and then, recover the

[1] (2017) 4 Supreme Court Cases 796

same from the owner of the offending vehicle in case of gratuitous passenger and ultimately, prayed to allow the appeal as prayed for.

4. Learned Standing Counsel appearing for the New India Assurance Company Limited appearing for respondent No.2 would contend that there is no coverage of risk of the claimant under the policy of the vehicle by which he was travelling i.e., auto bearing No.AP 23V 4047 and the Tribunal is justified in dismissing the claim against respondent No.2/Insurance Company and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel on both sides, the point that arises for determination is:

> ***"Whether the Tribunal is justified in dismissing the claim against respondent No.2/Insurance Company?"***

6. **POINT:-** There is no dispute with regard to the award of compensation of Rs.61,500/- with proportionate costs and interest at 7.5% per annum from the date of petition till the date of payment, as against a claim of Rs.1,00,000/-. The only dispute is with regard to the tagging of liability against respondent No.2/Insurance Company. The Tribunal placed reliance on the evidence of R.W.1 and also Ex.B-1 – copy of insurance policy. As per this evidence, the offending auto bearing No.AP 23V 4047 was insured as a goods carrying three wheeler i.e., New Bajaj Delivery Van and the policy of insurance was valid from 25.11.2003 to 24.11.2004. Admittedly, the offending auto bearing No.AP 23V 4047 is a goods carrying vehicle and it is not meant for travelling of passengers or any other person except driver. In **Manuara Khatun**

and others Vs. Rajesh Kumar Singh and others[2], the vehicle involved is a Tata Sumo and the passengers therein were travelling on hire and for violation of conditions by the owner and driver of the offending vehicle, the Apex Court directed the insurer/Insurance Company to deposit the compensation awarded at the first instance and then, recover the same from the owner of the offending vehicle in the very same proceedings before the Tribunal by filing an Execution Application. But in the instant case, the subject three wheeler auto bearing No.AP 23V 4047 is a delivery van. It is meant for carrying the goods only and not the passengers. In view of this, in the decision rendered in **New India Assurance Company Limited v. Asha Rani and others**[3], the Hon'ble Supreme Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants of the deceased who travelled in a goods vehicle, holds good. After elaborately dealing with the matter, the Tribunal was pleased to dismiss the claim against respondent No.2/Insurance Company. This finding is based on the evidence on record. Since Ex.B-1 is an act policy of insurance, the claimant, who is a gratuitous passenger travelling in auto bearing No.AP 23V 4047, is not entitled for compensation from respondent No.2/Insurance Company. There is no infirmity with regard to the finding given by the Tribunal. The appeal is devoid of merit and is liable to be dismissed.

7. Accordingly, this appeal is dismissed. There shall be no order as to costs.

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[2] 2017 ACJ 1031
[3] 2003(2) SCC 223

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

DR.JUSTICE SHAMEEM AKTHER

Date : 04.09.2018
AMD

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