

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2847 of 2006

JUDGMENT:-

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellants-claimants 1 and 2, challenging the Order, dated 26.10.2006, passed in O.P.No.268 of 2001, by the Motor Accident Claims Tribunal-cum-IV Additional District Judge (FTC), Anantapur ('the Tribunal', for brevity).

2. Heard both sides. Perused the record.

3. The learned counsel for the appellants-claimants 1 and 2 would contend that though P.W.3 categorically deposed in his evidence that the deceased travelled in the offending lorry bearing registration No.AP-02-T-2244 as owner of the goods, the Tribunal erred in not considering the same. No evidence was let in by the respondents to prove that the deceased travelled as a gratuitous passenger in the offending lorry bearing registration No.AP-02-T-2244. Since an amount of Rs.50/- was paid towards additional premium, Ex.B.1-copy of insurance policy covers the risk of one non-paid fare passenger travelling in the offending lorry bearing registration No.AP-02-T-2244. The Tribunal ought to have fastened liability against the 2nd respondent-Insurance company. The Tribunal erred in dismissing the claim petition against the 2nd respondent-Insurance Company and ultimately prayed to allow the appeal by setting aside the order under challenge.

4. On the other hand, the learned Standing Counsel for the 2nd respondent-Insurance Company would contend that the Tribunal rightly dismissed the claim petition against the 2nd respondent-Insurance Company holding that the deceased was travelling as a gratuitous passenger in the offending lorry bearing registration No.AP-02-T-2244. Payment of additional premium of Rs.50/- under Ex.B.1 insurance policy would not cover the risk of gratuitous passengers travelling in the offending lorry bearing registration No.AP-02-T-2244. It is further contended that in view of the decision of the Apex Court in New India Assurance Company Limited Vs. Asha Rani and others¹, gratuitous passengers travelling in a goods vehicle are not entitled to claim compensation from the insurer of the offending vehicle and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. There is no dispute with regard to the assessment and grant of compensation of Rs.2,27,000/- with interest @ 7.5% per annum from the date of restoration of O.P., i.e., 07.09.2006 till realisation, in favour of the claimants. The dispute is only with regard to fastening the liability against the 2nd respondent-Insurance Company to pay compensation.

6. The learned counsel for the appellants/claimants 1 and 2 contended that the deceased was travelling in the offending lorry bearing registration No.AP-02-T-2244 as representative of owner of goods and that since Ex.B.1-copy of insurance policy covers

¹ 2003 (2) SCC 223

the risk of one non-fare paid passenger travelling in the offending lorry bearing registration No.AP-02-T-2244, the 2nd respondent-Insurance company is liable to pay compensation. P.W.3-K.Obulesu, who is owner of the goods in the offending lorry, stated in his evidence that he authorised the deceased to travel in the offending lorry as his representative. But, no authorisation certificate is filed by the appellants/claimants 1 and 2 to substantiate the same. There is no iota of evidence to hold that the deceased travelled in the offending lorry as a representative of the owner of the goods. Admittedly, the offending vehicle is a lorry, which is a goods vehicle. Under these circumstances, it can be safely concluded that the deceased travelled as a gratuitous passenger in the offending lorry bearing registration No.AP-02-T-2244 as on the date of the subject accident. This aspect was elaborately dealt by the Tribunal and a clear finding was recorded in the impugned order to that effect. There is nothing to hold that the deceased was not travelling in the offending lorry bearing registration No.AP-02-T-2244 as a gratuitous passenger.

7. It is pertinent to state that the impugned order was passed on 26.10.2006, i.e., after the decision of the Apex Court in Asha Rani's case supra. In National Insurance Company Limited Vs. Baljit Kaur and others², the Apex Court made it clear that the decisions are prospective in nature. Under these circumstances, even a direction to pay the compensation to the claimants at the first instance and then recover the same from

² 2004 (1) TAC 336 (SC)

the owner of the offending vehicle cannot be given. None of the contentions raised on behalf of the appellants/claimants 1 and 2 merit consideration. The appeal is devoid of merit and is liable to be dismissed.

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

Pending miscellaneous petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

11th October, 2018
Bvv

