

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

C.M.A.No.2764 OF 2004

JUDGMENT:

This appeal is filed by the appellant-Insurance Company under Section 173 of the M.V. Act, aggrieved by the judgment, dated 16.03.2004, in O.P.No.1062 of 2000, passed by the Motor Accident Claims Tribunal-cum-District Judge, Nizamabad, wherein compensation of Rs.3,93,700/- was granted to the respondents-claimants against the appellant-insurance company and other respondent.

2. Heard the learned standing counsel for the appellant-Insurance Company, the learned counsel for the respondents-claimants and perused the record.

3. Learned standing counsel for the appellant-Insurance Company would contend that the subject policy is an act policy. The deceased-Bommala Deva Mallesh, was a gratuitous passenger in Maruthi Van bearing No.AP-9/R-8473. On 25.07.2000, when the deceased was traveling in the vehicle, the driver of the vehicle drove the same in a rash and negligent manner and dashed against the road side tree, due to which, the deceased suffered head injury and thereafter, succumbed to the injuries.

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**¹, 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

¹ 2008 (5) ALD 288 (DB)

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 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 appellant-insurance company would contend that the deceased was only a gratuitous passenger in the offending vehicle and the policy of insurance was only an act policy, and therefore, 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. It is further contended that the Tribunal had granted interest @ 9% per annum, which is excessive, and ultimately prayed to set aside the impugned order insofar as the appellant-insurance company is concerned.

4. On the other hand, learned counsel for the respondents-claimants relied on a decision in **MANUARA**

KHATUN AND OTHERS V RAJESH KUMAR SINGH AND OTHERS ²,
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 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.”

Relying on the above decision, it is contended by the learned counsel for the respondents-claimants that the claimants are entitled to recover the compensation awarded, from the Insurance Company.

5. At this juncture, it is pertinent to refer to a decision reported in **DHARAM PAL AND OTHERS V STATE ROAD TRANSPORT CORPORATION** ³, wherein it was held that interest payable to the claimants is @ 7.5% p.a. Therefore, there is no justification in awarding the interest at 9% p.a. by the Tribunal. So, the same is liable to be reduced to 7.5% p.a.

6. 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 25.7.2000. The policy of insurance of the offending vehicle is only an act policy. 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)

² (2017) 4 SCC 796

³ MANU SC 7680 2008

can be relied upon to determine the contentions raised by the parties as the deceased was a gratuitous passenger in the offending vehicle. Under these circumstances, the impugned order is modified to the extent that the appellant-Insurance Company is directed to pay the compensation awarded to the respondents-claimants. Thereafter, the appellant-Insurance Company would be entitled to recover the compensation amount so deposited, from the owner of the Maruthi Van bearing No. AP 9/R-8473, i.e., 7th respondent herein, in these very proceedings before the Tribunal by filing execution application.

7. With the above direction, the Civil Miscellaneous Appeal is allowed as indicated above. The claimants are entitled to interest at 7.5% p.a. only on the compensation amount granted by the Tribunal from the date of petition till the date of deposit. No order as to costs of the appeal. The other terms of the impugned order shall remain unaltered.

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

DR.SHAMEEM AKTHER, J

DATED: 21-06-2018

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