THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3727 of 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), by the appellants-Insurance Company aggrieved by the order dated 14.07.2005 in O.P.No.188 of 2002 on the file of the Motor Accident Claims Tribunal-cum-VI Additional District Judge (III-Fast Track Court), Warangal at Mahabubabad (for short 'the Tribunal').

2. Heard the learned Standing Counsel for appellants-Insurance Company, the learned counsel for the respondent-claimant and perused the record.

3. Learned Standing Counsel for the appellants-Insurance Company would contend that on 09.07.2001, the deceased, along with other persons, was travelling in the offending lorry bearing No.AP-11U-5137 to attend Chief Ministers' meeting at Korivi. In that process, the deceased and others suffered injuries and the deceased succumbed to the same. As the deceased was travelling as a gratuitous passenger, there is no coverage of risk of deceased under the insurance policy. There is evidence of R.W.1 and Ex.B1 to establish the same. However, the Tribunal erroneously held that there was coverage of insurance and awarded compensation against the insurer and the owner of the lorry jointly and severally, which is erroneous and ultimately, prayed to set aside the impugned order.

4. On the other hand, learned counsel for the respondent-claimant would contend that the Tribunal recorded a clear finding that there was valid insurance to the crime lorry besides goods and

six passengers, i.e., driver and two workers are allowed to travel in the crime lorry. As there is valid insurance to the crime vehicle, the Tribunal fastened the liability against the insurance company and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the only point that arises for determination is whether the contentions raised by the appellants are sustainable?

6. As per the evidence on record, the deceased along with others was travelling in the offending lorry bearing No.AP-11U-5137 on 09.07.2001. Due to the rash and negligent driving of the driver of the lorry, the lorry turned turtle. In that process, the deceased suffered injuries in the accident and succumbed to the same. As per the pleadings and the evidence on record, the deceased was neither a cooli nor owner of the goods. Therefore, it can safely be concluded that he was only a gratuitous passenger. It is appropriate to refer to the decision rendered in *New India Assurance Company Limited v. Asha Rani and others*[1], wherein it is held that a gratuitous passenger travelling in a goods vehicle is not entitled to claim compensation from the insurer of the offending vehicle. There is no coverage of risk of deceased under Ex.B1 policy of insurance. The Tribunal erroneously held that there was valid insurance and fastened the liability against the insurance company. Hence, the same is liable to be set aside.

7. Under these circumstances, the appeal is allowed and the impugned order dated 14.07.2005 in O.P.No.188 of 2002 is set aside absolving liability of insurer from paying compensation

[1] 2003(2) SCC 223

awarded. However, if any amount is deposited by the insurance company and the same is withdrawn by the claimants in this case, it shall not be recovered from them and the same can be recovered from the owner of the offending vehicle in the same proceedings before the Tribunal by filing an Execution Petition.

The Miscellaneous Petitions, if any, pending shall stand closed. No costs.

Dr. SHAMEEM AKTHER, J

Date: 01.10.2018
ssp