THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.399 of 2006

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity), is filed by the appellant-the National Insurance Company Limited, challenging the order, dated 30.08.2005 passed in O.P.No.508 of 1999 by the Motor Accident Claims Tribunal-cum-III Additional District Judge, Mahabubnagar at Gadwal ('the Tribunal', for brevity).

2. Heard the learned Standing Counsel for the appellant-insurance company and perused the record. Despite listing this matter under the caption "For Orders", there is no representation for the respondents 1 to 3/claimants. This appeal is of the year 2006. Hence, this appeal can be disposed of on merits basing on the material available on record, without waiting for the learned counsel for the respondents 1 to 3/ claimants to advance arguments.

3. The learned Standing Counsel for the appellant-Insurance Company would contend that while the deceased-Boya Govindu was travelling as a gratuitous passenger in the Tractor and Trailer bearing registration Nos.AP-22-C-1207/1208 on 27.05.1999, he suffered injuries and succumbed to the same when the said Tractor-Trailer met with the subject accident. There is no coverage of risk of gratuitous passengers under Ex.B.1-Policy of Insurance of the offending Tractor-Trailer. The Tribunal erroneously tagged liability against the appellant-

Insurance Company. Grant of compensation of Rs.1,32,000/- in favour of the respondents 1 to 3/claimants as against a claim of Rs.1,50,000/- is also excessive and ultimately prayed to allow the appeal by setting aside the Order under challenge.

4. In view of the above submissions, the point that arises for determination in this appeal is whether the appeal is liable to be allowed as prayed for.

5. It is not in dispute that the deceased suffered injuries in the motor accident occurred on 27.05.1999, due to the rash and negligent driving of the driver of the offending Tractor-Trailer bearing registration Nos. Nos.AP-22-C-1207/1208 and succumbed to the same. There is record to show that the deceased was aged 24 years as on the date of accident. The Tribunal assessed the compensation payable as Rs.1,32,000/- and granted the same to the respondents 1 to 3/claimants (father, mother and sister of the deceased). Grant of said compensation for the death of a man aged 24 years is not excessive.

6. As per the oral and documentary evidence on record, on 27.05.1999, the deceased-Boya Govindu was travelling by the Tractor-Trailer bearing registration Nos.AP-22-C-1207/1208 as a gratuitous passenger. When the driver of the said Tractor-Trailer drove the same in rash and negligent manner and applied sudden brakes, the deceased fell down from the Trailer and the Trailer went over his body. The deceased suffered injuries all over his body and he succumbed to the same. There is evidence

of R.W.1-G.Koteswar Rao that the risk of the gratuitous passengers is not covered under Ex.B.1-Policy of Insurance of the offending Tractor-Trailer.

7. It is apt to refer the decision of the Apex Court in New India Assurance Company Limited v. Asha Rani and others[1], wherein, the deceased travelled in a goods vehicle as a gratuitous passenger and in the circumstances, the Apex Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants.

8. A copy of the Insurance Policy of the offending Tractor-Trailer is marked as Ex.B.1. A perusal of the said Insurance Policy makes it clear that it does not cover the risk of gratuitous passengers. The decision of the Apex Court in Asha Rani's case supra holds the field. Under these circumstances, the Tribunal erred in directing the appellant-Insurance Company to pay compensation awarded to the respondents 1 to 3/claimants. Accordingly, the said finding is liable to be set aside.

9. In the result, the appeal is allowed and the impugned order, dated 30.08.2005 passed in O.P.No.508 of 1999 by the Motor Accident Claims Tribunal-cum-III Additional District Judge, Mahabubnagar at Gadwal, against the appellant-Insurance Company is set aside. It is needless to mention that if the respondents 1 to 3/claimants have already withdrawn the amount, if any, deposited by the appellant-Insurance Company in the subject O.P., the appellant-Insurance Company is entitled

[1] 2003(2) SCC 223

to recover the said amount from the 4th respondent/owner of the offending Tractor-Trailer by filing Execution Application in the same proceedings before the Tribunal, without there being any separate case.

Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

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Dr. SHAMEEM AKTHER, J

14th August, 2018
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