**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**C.M.A. No.4878 OF 2004**

**JUDGMENT:**

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved by the order dated 26.08.2004 passed in O.P. No.617 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Ongole (for short, 'the Tribunal'). The Divisional Manager, United India Insurance Company Limited, Ongole, Prakasam District, who is appellant herein, is the 2nd respondent in the original petition. The 1st respondent herein is the petitioner and the 2nd respondent herein is the owner of the crime vehicle in the original petition.

2. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. Heard the learned Standing Counsel for the appellant-insurer of the crime vehicle. Though served with notice, there is no representation on behalf of the 1st respondent-petitioner. The appeal against the 2nd respondent-owner of the crime vehicle is dismissed for default, vide orders dated 13.10.2017.

4. Brief facts of the case are that on 16.06.2000 at about 3-00 p.m., the petitioner along with others went to Yerrabalem village in a lorry bearing registration No.AEE 4590 for cutting Batavia fruits. While they were returning to Cumbum, the petitioner was sitting on the Batavia fruits load in the lorry along with others and when the lorry reached near the land of M.Venkateswarlu in Cumbum-Turimella road, the driver of the lorry drove the same in a rash and negligent manner at high speed and he could not control the lorry, due to which, the lorry turned turtle. As a result of which, the petitioner sustained multiple injuries and also fracture of her right leg, other persons travelling in the lorry also received injuries and one among them died o the spot. Thereafter, the petitioner was shifted to Government Hospital, Cumbum and from there she was referred to

Government General Hospital, Kurnool, and she took treatment there for 15 days as an inpatient and then shifted to a private hospital and treated therein for about 10 days as an inpatient. The petitioner stated that she spent Rs.50,000/- towards her treatment. The Station House Officer, Bestavaripeta Police Station registered the accident as a case in Crime No.17 of 2000 for the offences under Sections 337, 338 and 304A I.P.C. against the driver of the crime lorry.

5. Respondent No.1-owner of the crime vehicle filed counter denying all the averments made in the petition and contended that the lorry bearing registration No.AEE 4590 was duly insured with the 2nd respondent-insurer and the insurance policy was in force at the time of accident and it is the 2nd respondent-insurer has to indemnify the liability of the 1st respondent.

6. Respondent No.2-insurer filed counter denying all the averments made in the claim petition and contended that the compensation claimed by the petitioner is highly excessive and the petitioner was a gratuitous passenger who travelled in a goods vehicle and violated the terms and conditions of the insurance policy. It is further contended that the driver of the crime lorry was not having any valid licence at the time of the accident, which amounts to violation of terms and conditions of the insurance policy. Therefore, the petitioner is not entitled to claim any compensation from the insurer of the crime vehicle.

7. The Tribunal after considering the evidence of the petitioner examined as P.W.1 and the documents Exs.A.1 and A.2 and the evidence of Assistant Administrative Officer of the 2nd respondent-insurer examined as R.W.1 and Exs.B.1 and B.2, granted Rs.26,500/- with interest at 9% per annum towards compensation to the petitioner vide the order dated 26.08.2004, directing both the respondents to pay the same. Challenging the said order, the insurer of the crime vehicle preferred this appeal.

8. Learned counsel for respondent No.2-insurer (appellant herein) would submit that the petitioner is not entitled to claim compensation as she travelled by the goods vehicle; the Tribunal erred in holding that the petitioner is entitled for compensation, though the petitioner clearly admitted in her evidence that she along with 40 others boarded the accident vehicle to attend coolie work; the Tribunal erred in awarding excess compensation to the petitioner without any basis; and ultimately, prayed to allow all the appeal by dismissing the claim against respondent No.2-insurer.

9. In view of the contentions raised on behalf of respondent No.2-insurer, the point for determination is, whether the impugned order dated 26.08.2004 passed in O.P. No.617 of 2000 by the Tribunal is liable to be set aside?

10. **POINT**: The specific case of the petitioner is that she was travelled in the crime lorry as coolie. To substantiate the contentions, the petitioner was examined as P.W.1 and got marked Exs.A.1 and A.2. Ex.A.1 is the certified copy of F.I.R. and Ex.A.2 is the certified copy of wound certificate of the petitioner. On behalf of the 2nd respondent-insurer, its Assistant Administrative Officer was examined as R.W.1 and Exs.B.1 and B.2 were marked. Ex.B.1 is the copy of insurance policy of the crime vehicle and Ex.B.2 is the certified copy of the charge sheet in C.C. No.354 of 2001 on the file of the Judicial Magistrate of First Class, Giddalur. The specific contention of the 2nd respondent-insurer is that the petitioner travelled in the crime lorry as a gratuitous passenger. In the cross-examination, P.W.1 admitted that the Batavia fruits were loaded in the crime lorry upto the cabin level, they all sat on the load of the lorry and about 45 to 50 persons were sitting on the load at the time of accident. The evidence of R.W.1-Assistant Administrative Officer of the 2nd respondent-insurer reveals that the crime lorry was insured with their Insurance Company, the insurance policy issued for the said vehicle is only an act policy, Ex.B.1 is the copy of insurance

policy, the premium paid was Rs.2,949/-, which covers only driver and the cleaner and no premium was paid covering the risk of the coolies. His evidence further reveals that at the time of accident, 40 passengers were travelling in the crime lorry and no premium was paid for the risk of the unauthorised passengers. R.W.1 stated in his evidence that the driver of the offending lorry was not having driving licence at the time of the accident, the police have filed charge sheet against the owner of the lorry and Ex.B.2 is the certified copy of the charge sheet showing the owner of the lorry as accused No.2 in the charge sheet.

11. It is apt to refer the decision of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**[1], where the deceased was travelled in a goods vehicle and the Hon'ble Supreme Court held that the insurer of the offending vehicle is not liable to pay any compensation to the claimants.

12. In the present case, the petitioner was travelled in a goods vehicle along with other 40 passengers and there was no premium paid for the risk of the unauthorised passengers. In view of the specific evidence of the petitioner-injured, she along with 40 other passengers was travelling by the crime lorry. The crime lorry was already loaded with Batavia fruits upto the cabin level. As per Ex.B.1-copy of insurance policy of the crime lorry, there was no coverage of risk of the labourers. Under these circumstances, the petitioner-injured cannot be held as labourer engaged to load and unload Batavia fruits in the lorry. She was only a gratuitous passenger. The Tribunal erroneously held that the petitioner-injured was not gratuitous passenger. Further, there is no coverage of risk of the petitioner-injured. There is no policy insuring labourers on the offending lorry. The risk of the petitioner-injured has not been covered under Ex.B.1-copy of the insurance policy of the crime lorry. There is no contractual obligation on the part of the insurer to indemnify the owner of the offending

[1] 2003(2) SCC 223

vehicle in respect of passengers travelling in goods vehicle/offending lorry. Under these circumstances, the Tribunal ought not have tagged liability against the 2nd respondent-insurer. Therefore, the impugned order passed against the 2nd respondent-insurer (appellant herein) is liable to be set aside. Accordingly, this point is answered.

13. In the result, this appeal is allowed and the impugned order dated 26.08.2004 passed in M.V.O.P. No.617 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Ongole against the 2nd respondent-insurer (appellant herein) is set aside. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

**Dr. SHAMEEM AKTHER, J**

Date: 07.06.2018
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