

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

C.M.A. Nos.1317, 1322, 1323 AND 1324 OF 2004

COMMON JUDGMENT:

All these appeals, filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), arise out of a common order dated 31.12.2003 passed in M.V.O.P. Nos.28, 26, 27 and 29 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Guntur (for short, 'the Tribunal') along with M.V.O.P. Nos.24, 25 and 30 of 2000, wherein the Tribunal while granting compensation to the appellants-claimants, dismissed the petitions against the insurer of the crime vehicle and directed the owner of the crime vehicle to pay compensation to the claimants.

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 counsel for the appellants-claimants and the learned Standing Counsel for the 2nd respondent-insurer, apart from perusing the material available on record. Though served with notice, none appeared for respondent No.1-owner of the crime vehicle.

4. Brief facts of the case are that on 08.12.1999, the petitioners in M.V.O.P. Nos.27, 28 and 29 of 2000, the deceased in M.V.O.P. No.26 of 2000 and some others boarded a lorry bearing registration No.AP 16W 1849 at Yampet to go to Vijayawada with household utensils, clothes, plastic buckets and flowers. At about 2-00 a.m. on the early hours of 09.12.1999, when the lorry reached near Naydupet village on National Highway No.5, driver drove the lorry in a rash and negligent manner, due to which the tyre of the lorry burst and hit a road side tree, as a result of which, all the passengers sustained injuries and three of them died due to the injuries received in the said accident. The Station

House Officer, Guntur Taluq Police Station registered a case in Crime No.265 of 1999 for the offences under Sections 304-A, 338 and 337 I.P.C. against the driver of the lorry.

5. Respondent No.1, who is the owner of the crime vehicle, remained *ex parte* in all the petitions before the Tribunal.

6. Respondent No.2-insurer in all the petitions filed counters before the Tribunal denying all the averments made in the claim petitions and contended that the compensation claimed by the petitioners is highly excessive and the petitioners are not entitled to claim any compensation, unless it is proved that there is valid permit, fitness certificate and other relevant documents at the time of accident.

7. The Tribunal tried all the claim petitions together and after considering the evidence of P.Ws.1 to 6 and the documents Exs.A.1 to A.19 marked on behalf of the claimants and the evidence of R.W.1 examined on behalf of the 2nd respondent-insurer, granted compensation to the petitioners *vide* common order dated 31.12.2003, directing the 1st respondent-owner of the crime vehicle to pay the same and dismissed the petitions against the 2nd respondent-insurer. Challenging the said common order, the claimants preferred all these appeals.

8. Learned counsel for the appellants-claimants would submit that the compensation granted by the Tribunal is very meagre; the Tribunal failed to appreciate that the insurance policy covers the risk of the driver and cleaner of the crime vehicle; the Tribunal though held that the deceased-Sreenivasa Rao in C.M.A. No.1322 of 2004 was working as a cleaner of the offending vehicle died in the accident during the course of employment, erred in holding that the claimants

are not entitled to any compensation from the 2nd respondent-insurer; and ultimately, prayed to allow all the appeals by enhancing the compensation against the 2nd respondent-insurer. Learned counsel for the appellants-claimants has relied on a decision of Division Bench of the Hon'ble Supreme Court in **Manuara Khatun and others v. Rajesh Kr. Singh and others**¹, where the deceased was a gratuitous passenger and the Hon'ble Supreme Court directed the insurer first to pay the compensation and recover the same from the owner of the offending vehicle.

9. Learned Standing Counsel for the 2nd respondent-insurer would submit that the claimants are not entitled to travel by the goods vehicle; the insurer did not undertake the risk of passengers travelling in the offending vehicle; the insurer is not entitled to pay any compensation to the claimants; the Tribunal had rightly dismissed the claim against the 2nd respondent-insurer; and ultimately, prayed to dismiss all the appeals. In support of his contentions, he relied on a decision of a Three-Judge bench of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani**², 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.

10. In view of the contentions raised on behalf of respondent No.2-insurer, the point for determination is, whether the impugned common order dated 31.12.2003 passed in M.V.O.P. Nos.26, 27, 28 and 29 of 2000 by the Tribunal is sustainable and the petitioners are entitled for enhancement of compensation?

¹ 2017(2) ALD 65 (SC)

² 2002 L.S. (SC) 1172

11. **POINT:** The specific case of the claimants is that they were travelled in the lorry as the owners of the goods and the insurer of the lorry is liable to pay compensation to them along with the owner of the lorry. To substantiate the contentions, the claimants examined P.Ws.1 to 6 and got marked Exs.A.1 to A.19. Ex.A.1 is the certified copy of F.I.R., Ex.A.2 is the certified copy of charge sheet, Ex.A.3 is the certified copy of Motor Vehicles Inspector's report, Ex.A.4 is the certified copy of the wound certificate of the petitioner in M.V.O.P. No.29 of 2000, Ex.A.5 is the wound certificate of the petitioner in M.V.O.P. No.27 of 2000, Ex.A.6 is the certificate issued by M.V.S.Accident Hospital, Vijayawada in favour of petitioner in M.V.O.P. No.27 of 2000, Exs.A.7 and A.8 are the medical bills, Ex.A.9 is the certified copy of post-mortem certificate of the deceased in M.V.O.P. No.27 of 2000, Ex.A.10 is the certified copy of inquest report of the deceased in M.V.O.P. No.27 of 2000, Ex.A.11 is the certified copy of the post-mortem certificate of the deceased in M.V.O.P. No.28 of 2000, Ex.A.12 is the certified copy of inquest report of the deceased in M.V.O.P. No.28 of 2000, Ex.A.13 is the OP chit of the petitioner in M.V.O.P. No.30 of 2000, Ex.A.14 is the certified copy of the wound certificate of the petitioner in M.V.O.P. No.30 of 2000, Ex.A.15 is the OP chit issued by Government General Hospital, Guntur of the petitioner in M.V.O.P. No.30 of 2000, Ex.A.16 is the certified copy of the wound certificate of the petitioner in M.V.O.P. No.25 of 2000, Ex.A.17 is the OP chit issued by the Government General Hospital, Guntur, relating to the petitioner in M.V.O.P. No.25 of 2000, Ex.A.18 is the certified copy of the inquest report relating to the deceased in M.V.O.P. No.26 of 2000 and Ex.A.19 is the certified copy of the post-mortem certificate of the deceased in M.V.O.P. No.26 of 2000. The contention on behalf of the 2nd respondent-insurer is that the injured and deceased persons were travelling in the lorry as unauthorised passengers and the owner of the lorry violated the terms and conditions of the insurance policy. To prove its

contentions, the 2nd respondent-insurer examined its Senior Assistant as R.W.1, through him, Ex.B.1-insurance policy was marked.

12. Though the petitioners in M.V.O.P. Nos.27, 28 and 29 of 2000 contended that they were travelling with the goods, there is no iota of evidence to substantiate the same. The Tribunal while dealing with this issue had elaborately analysed the entire evidence on record and concluded that the petitioners were gratuitous passengers in the offending vehicle. There is also no evidence to believe that the deceased in M.V.O.P. No.26 of 2000 was cleaner of the offending lorry. Therefore, it can be held that the deceased in M.V.O.P. No.26 of 2000 was also a gratuitous passenger. The same is held by the Tribunal. To reach the above conclusion, the Tribunal had assigned valid reasons. Therefore, there is nothing to take a different view.

13. The decision rendered by the Hon'ble Supreme Court in **Manuara Khatun's** case (1 supra) is a Division Bench decision, whereas the decision rendered in **Asha Rani's** case (2 supra) is a Full Bench decision of the Hon'ble Apex Court and it holds the field. Therefore, the contention raised on behalf of the appellants-claimants that the claimants are entitled to compensation from the 2nd respondent-insurer does not merit consideration.

14. As far as the compensation payable to the petitioners in all the subject petitions is concerned, the Tribunal had conducted a detailed examination of the injuries, assessed the compensation payable and awarded the same against the 1st respondent-owner of the offending lorry. These findings are also basing on the evidence on record. It cannot be said that the amounts of compensation awarded to the petitioners are meagre. There is also nothing to take a different. This point is answered accordingly.

15. In the result, all these appeals are dismissed confirming the common order dated 31.12.2003 passed by the Tribunal in M.V.O.P. Nos.28, 26, 27 and 29 of 2000.

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

Dr. SHAMEEM AKTHER, J

Date: 08.06.2018
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