THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3326 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-Insurance Company aggrieved by the order dated 25.02.2005 in M.V.O.P.No.967 of 2000 on the file of the Motor Accident Claims Tribunal-cum-Principal District Judge, Khammam (for short 'the Tribunal').

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

3. Learned Standing Counsel for the appellant-Insurance Company would contend that the policy of insurance is an act policy. There is no coverage of risk of gratuitous passengers travelling in the offending lorry bearing No.AP 16V 4113. The Tribunal erroneously fastened the liability against the Insurance Company and ultimately prayed to set aside the order passed against the Insurance Company.

4. On the other hand, learned counsel for the respondent-claimant would contend that the Tribunal had rightly determined and granted the compensation against the owner and the appellant-Insurance Company. There are no circumstances to vary the order. He relied on the decision reported in *Oriental Insurance Company, Hyderabad v. Tadi Lova Raju and another*[1] and contended that a direction to the insurance company to pay the compensation at first instance and recover the same from the owner of the offending vehicle is correct and prayed to dismiss the appeal.

---

[1] 2014(3) ALD 601

5. In view of the submissions made by both sides, there is no dispute with regard to the assessment and award of compensation of Rs.2,79,000/- with interest @ 9% per annum for the injures suffered by the claimant in a motor accident that occurred on 20.09.2000 due to the rash and negligent driving of the driver of the lorry bearing No.AP 16V 4113. The only dispute is with regard to fastening the liability against the appellant-Insurance Company.

6. The specific case of the respondent-claimant is that when he was travelling along with two rice bags in the offending lorry bearing No.AP 16V 4113 on 20.09.2000, the accident occurred. There is also evidence of P.W.1-injured to that effect. The evidence of R.W.1 is that the driver and owner of the offending lorry have violated the terms and conditions of the policy. The claimant-injured was the gratuitous passenger. There is no dispute with regard to the valid insurance policy on the date of accident. It is only an act Policy. Ex.B1-insurance policy does not cover the risk of the gratuitous passenger. As per the evidence, the respondent-claimant was carrying two bags of rice in the offending lorry. Merely carrying two bags of rice would not make the traveller as owner of the goods. Viewed from any angle, the respondent-claimant would not fall in the category of owner of the goods. In the circumstances of the case, he was only a gratuitous passenger.

7. It is apt to refer to the decision of the Hon'ble Supreme Court in *New India Assurance Company Limited v. Asha Rani and others*[2], wherein it is held that the insurer of the offending vehicle is not liable to pay any compensation to the claimant, who is

[2] 2003(2) SCC 223

gratuitous passenger in a goods vehicle and the owner alone is liable to pay the compensation.

8. Learned counsel for the respondent-claimant had relied on the decision reported in *Tadi Lova Raju's* case (1 supra), wherein the injured-claimant was a gratuitous passenger allowed by the driver to travel on the top of the lorry with his bicycle, the insurance company was directed to pay the compensation awarded to claimant and then recover the same from the owner of the offending vehicle by initiating proceedings before the Tribunal by filing execution petition. In view of the decision rendered in *Asharani's* case (2 supra), no reliance can be placed on this decision. Therefore, no direction can be given to the appellant-insurance company to satisfy the award at the first instance and recover the same from the owner of the vehicle.

9. In the result, the appeal is allowed setting aside the impugned order exonerating the liability fastened against the appellant-Insurance Company.

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

____
Dr. SHAMEEM AKTHER, J

Date: 20.08.2018
ssp