

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3513 of 2005

JUDGMENT:-

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellants-claimants, challenging the Order, dated 13.09.2005, passed in M.V.O.P.No.217 of 2002, by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, East Godavari at Kakinada ('the Tribunal', for brevity).

2. Heard the learned counsel for both sides and perused the record.

3. The learned counsel for the appellants-claimants would contend that in view of the decision of the Apex Court in National Insurance Company Limited Vs. Baljit Kaur and others¹, the Tribunal ought to have directed the 3rd respondent herein/insurer of the offending vehicle bearing registration No.AIW-4797 to pay the compensation to the claimants at the first instance and then recover the same from the owner of the offending vehicle. The Tribunal erred in dismissing the claim petition against the 3rd respondent-Insurance Company and ultimately prayed to allow the appeal by setting aside the order under challenge.

4. On the other hand, the learned Standing Counsel for the 3rd respondent-Insurance Company would contend that the

¹ 2004 (1) TAC 336 (SC)

Tribunal rightly relied on the decision of the Apex Court in National Insurance Co. Ltd. vs Bommithi Subbhayamma and others² and dismissed the claim petition against the 3rd respondent-Insurance Company holding that the deceased was travelling as a gratuitous passenger on the offending lorry bearing registration No.AIW-4797. It is further contended that in view of the decision of the Apex Court in New India Assurance Company Limited Vs. Asha Rani and others³, gratuitous passengers travelling in a goods vehicle are not entitled to claim compensation from the insurer of the offending vehicle.

5. There is no dispute with regard to the assessment and grant of compensation of Rs.1,57,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit in favour of the claimants. The dispute is only with regard to fastening the liability against the 3rd respondent-Insurance Company to pay compensation.

6. The aspect of the deceased travelling in the offending lorry bearing registration No.AIW-4797 as a gratuitous passenger on the date of the subject accident was elaborately dealt by the Tribunal and a clear finding was recorded in the impugned order to that effect. There is nothing to hold that the deceased was not travelling in the offending lorry bearing registration No.AIW-4797 as a gratuitous passenger. It is pertinent to state that the impugned order was passed on 13.09.2005, i.e., after the

² 2005 ACJ 721

³ 2003 (2) SCC 223

decision of the Apex Court in Asha Rani's case (3 supra). In Baljit Kaur's case (1 supra), it was made clear that the decisions are prospective in nature. Under these circumstances, even a direction to pay the compensation to the claimants at the first instance and then recover the same from the owner of the offending vehicle cannot be given. The appeal is devoid of merit and is liable to be dismissed.

7. In the result, the appeal is dismissed. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

06th September, 2018
Bvv



Dr. SHAMEEM AKTHER, J