

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3389 of 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant-the United India Insurance Company Limited, challenging the order, dated 26.05.2005, passed in O.P.No.127 of 2004, by the Chairman, Motor Accident Claims Tribunal-II Additional District Judge, Nalgonda at Suryapet ('the Tribunal', for brevity).

2. Heard both sides. Perused the record.

3. The learned Standing Counsel for the appellant-Insurance Company would contend that the 1st respondent/claimant was travelling as a gratuitous passenger in the offending lorry bearing registration No.AEG-135 as on the date of the subject accident, i.e., on 10.06.2002. In view of the law laid down by the Apex Court in National Insurance Co. Ltd. Vs Bommithi Subbayamma and others¹, no liability to pay compensation can be tagged against the appellant-Insurance company and ultimately prayed to allow the appeal by setting aside the order under challenge.

4. On the other hand, the learned counsel for the 1st respondent-claimant would contend that the 1st respondent-claimant travelled with a sewing machine by the offending lorry bearing registration No.AEG-135 on the date of the subject accident. There is ample evidence to substantiate the same.

¹ 2005 ACJ 721

The Tribunal rightly fastened liability against the appellant-Insurance Company and ultimately prayed to dismiss the appeal by confirming the order under challenge.

5. In view of the above rival contentions, the point that arises for determination in this appeal is whether the 1st respondent-claimant travelled with a sewing machine in the offending lorry bearing registration No.AEG-135 on the date of the subject accident and, if so, whether liability to pay compensation be tagged against the appellant-Insurance Company.

6. There is no specific mention in the pleadings that the 1st respondent-claimant travelled with a sewing machine in the offending lorry bearing registration No.AEG-135 on the date of the subject accident on 10.06.2002. Even there is no specific evidence of the 1st respondent-claimant, who examined herself as P.W.1, that she was transporting a sewing machine in the offending lorry bearing registration No.AEG-135 on the date of the subject accident. In Ex.A.1-attested copy of FIR and Ex.A.2-attested copy of Charge-sheet also, there is no mention that the 1st respondent-claimant travelled with a sewing machine in the offending lorry bearing registration No.AEG-135 on the date of the subject accident. Absolutely there is no record to hold that the 1st respondent-claimant travelled with a sewing machine in the offending lorry bearing registration No.AEG-135 on the date of the subject accident. Even if anybody travels with a sewing machine in an offending vehicle, when it is a goods vehicle, it cannot be held that he/she is the owner of goods and is entitled for compensation from the owner of the offending vehicle and its

insurer. Admittedly, the offending lorry bearing registration No.AEG-135 is a goods vehicle. Therefore, no gratuitous passenger or a paid passenger is entitled to claim compensation against the insurer. The Tribunal failed to record a specific finding as to whether the 1st respondent-claimant travelled as the owner of the goods in the offending vehicle bearing registration No.AEG-135 on the date of the subject accident and is entitled for compensation. The Tribunal merely held that the driver of the offending lorry bearing registration No.AEG-135 was responsible for the occurrence of the subject accident and injuries to 1st respondent-claimant and hence, the 2nd respondent/owner of the offending lorry bearing registration No.AEG-135 and its insurer (appellant-Insurance company) are liable to pay compensation, which is erroneous. Under these circumstances, the impugned order of the Tribunal passed against the appellant-Insurance Company is liable to be set aside.

7. In the result, the appeal is allowed and the order, dated 26.05.2005, passed in O.P.No.127 of 2004, by the Chairman, Motor Accident Claims Tribunal-II Additional District Judge, Nalgonda at Suryapet, against the appellant-Insurance company is set aside. It is needless to mention that if the appellant-Insurance company had deposited any amount to the credit of the O.P. after passing of the impugned order by the Tribunal and if any amount is withdrawn by the 1st respondent-claimant on such deposit, the appellant-Insurance company is at liberty to recover the same from the 2nd respondent/owner of the

offending lorry bearing registration No.AEG-135 in the same proceedings before the Tribunal by filing an Execution Application.

There shall be no order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

10th October, 2018
Bvv

