

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1661 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellants/claimants aggrieved by the order, dated 31.03.2005, passed in O.P.No.53 of 2000 by the learned Chairman, Motor Accident Claims Tribunal – cum - District Judge, Anantapur (for short, “the Tribunal”) aggrieved by the dismissal of the claim against respondent No.2/the National Insurance Company Limited and directing respondent No.1/owner of the Matador van bearing No.AP 02 2325 (offending vehicle) to pay the entire compensation.

2. Heard the submissions of the learned counsel appearing for the appellants/claimants. Though this matter is posted today under the caption “For Orders”, there is no representation on behalf of respondent No.2/Insurance Company. The appeal pertains to the year 2005. So, it can be disposed of basing on the record available.

3. Learned counsel for the appellants/claimants would contend that the Tribunal granted a compensation of Rs.1,75,000/- against the owner of the offending van, as prayed, together with costs and interest at the rate of 9% per annum from the date of petition till the date of deposit of amount into Court on account of the death of one Kuruva Nagaraju, who died in a motor accident that occurred on 20.06.1999, but the Tribunal dismissed the claim against respondent No.2/Insurance Company stating that the Matador van bearing No.AP 02 2325 (offending vehicle) was plied for hire against

the terms and conditions of the policy of insurance; that there was no coverage of risk of the passengers travelling in the said van and the deceased was one among them; that having assessed the compensation, the Tribunal dismissed the claim against respondent No.2, which is erroneous; that there is a policy of insurance to the offending vehicle; that there is no violation of the terms and conditions of the policy and ultimately, prayed to tag the liability against respondent No.2/Insurance company also.

4. As per the evidence on record, the deceased Kuruva Nagaraju was travelling in a Matador van bearing No.AP 02 2325 (offending vehicle) from Bangalore to Anantapur on 20.06.1999. The driver of the said van drove in a high speed and in a negligent manner and dashed against a lorry coming in the opposite direction as a result of which, the deceased sustained injuries and succumbed to those injuries. There were other travellers in the van. The Tribunal, on the ground that the offending van was plied as a taxi by violating the terms and conditions of Ex.B-1 – copy of policy of insurance and more passengers than the seating capacity were travelling by the offending van, held that the insurer is not liable to pay the compensation to the claimants.

5. It is apt to refer to the decision of the Apex Court in **Manuara Khatun and others Vs. Rajesh Kumar Singh and others**¹ wherein the Apex Court directed the insurer/Insurance Company to deposit the compensation awarded in respect of death of a person travelling in Tata Sumo, passenger carrying vehicle, at the first instance and then to recover the same from the owner of

¹ 2017 ACJ 1031

the offending vehicle. Admittedly, the offending vehicle is a Matador van bearing No.AP 02 2325, which is a passenger carrying vehicle. There is coverage of risk of third party under Ex.B-1 – copy of policy of insurance. The case of the appellants/claimants herein are similarly placed. In the circumstances of the case on hand as well as the circumstances of the case referred in the above decision, a direction can be given to respondent No.2/Insurance Company to pay the compensation at the first instance and then to recover the same from the owner of the Matador van bearing No.AP 02 2325/respondent No.1 in the same proceedings.

6. Accordingly, the appeal is allowed setting aside the order, dated 31.03.2005, passed in O.P.No.53 of 2000 by the learned Chairman, Motor Accident Claims Tribunal – cum - District Judge, Anantapur to the extent of dismissing the claim against respondent No.2/Insurance Company. Respondent No.2/Insurance Company is directed to first deposit the entire compensation amount and then recover the same from respondent No.1/owner of the offending Matador van bearing No.AP 02 2325 in the very same proceedings before the Tribunal by filing an Execution Application. The other terms in the impugned order remain unaltered. There shall be no order as to costs.

7. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 08.08.2018
AMD



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