THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No. 1118 of 2006

JUDGMENT:

This appeal is filed by the insurance company aggrieved by the judgment and decree dated 23.11.2005 passed in O.P.No.1439 of 2002 by the XXII Additional Chief Judge-cum-Motor Accidents Claims Tribunal, Hyderabad on account of the accident occurred on 05.05.2002, when the claimant and her family members boarded in the cabin of the lorry bearing No. KA 32A 5115, the driver of the said lorry driven it in a rash and negligent manner with high speed and dashed the stationed vehicle bearing No.AP 25 B 4683, for which the lorry bearing No.KA 32A 5115 turned turtle, the claimant loose her left leg and also sustained several injuries.

On considering the oral and documentary evidence available on record, the tribunal granted compensation of Rs.2,00,000/- with proportionate costs and interest @ 7.5% per annum making the respondents liable to pay the compensation jointly and severally, as against the claim of Rs.3,00,000/-.

Learned standing counsel for the insurance company contended that since the claimants were gratuitous passengers in a goods vehicle, in which case the liability for payment of compensation for death or body injury to the passengers of such goods vehicle would not be covered, hence the principle of pay and recover would not apply.

Learned counsel for the claimant submits that the order passed by the tribunal is well considered and needs no interference of this Court. He further submits that though respondent

No.2/claimant travelled in the lorry as an unauthorized passenger, the liability of the insurance company cannot be exonerated and hence, the Tribunal has rightly passed the Award, and the same does not need any interference. He further submits that even, for the sake of argument, the liability of insurance company is exonerated, the insurance company is still liable to pay the claimant at the first instance and then recover from the owner of the vehicle in view of the decision of the Apex Court in **Anu Bhanvara Vs. Iffco Tokio General Insurance Company Limited**[1]**.**

Having considered the rival contentions, it is not in dispute that the lorry in question is a goods carriage vehicle; and at the time of accident, the claimant was traveling on the lorry as a gratuitous passenger, and there is no insurance coverage covering the risk of the claimant. It is also not in dispute that the insurance policy (Ex-B.1) was valid and subsisting as on the date of accident. Therefore, it can be said that respondent No.1 travelled as a gratuitous passenger in the crime vehicle. In **Anu Bhanvara's** case, the Apex Court while dealing with the case of gratuitous passengers, directed the insurer to pay the awarded sum to the claimants therein and recover the same from the insured in the same proceedings. In view of the above, as respondent No.1 travelled as a gratuitous passenger in the lorry, it is just and reasonable to invoke the principle of 'pay and recover'. Therefore, the finding of the Tribunal directing the insurance

[1] 2019(5) ALD SC 287

company and respondent No.2 herein to deposit the compensation amount jointly and severally is set aside.

In view of the foregoing discussion, the judgment and decree dated 23.11.2005 passed in O.P.No.1439 of 2002 by the XXII Additional Chief Judge-cum-Motor Accidents Claims Tribunal, Hyderabad is modified to the extent of directing the appellant/insurance company to pay the compensation amount to the claimant/respondent No.1 in the first instance, and recover the same from the owner of the lorry. Except the said modification, the judgment and decreed passed by the Tribunal shall remain unchanged.

Accordingly, the appeal is disposed of. There shall be no order as to costs.

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

T. AMARNATH GOUD, J

31.10.2019
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