HONOURABLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. No.3994 OF 2014

JUDGMENT:

Feeling aggrieved by the order dated 17.03.2006 in OP No.35 of 2005 passed by the Motor Vehicle Accident Claims Tribunal – cum – III-Additional District Judge, Karimnagar, the appellant – Insurance Company preferred the present appeal.

2. Vide the aforesaid order, the Tribunal granted an amount of Rs.50,000/- towards compensation to respondents Nos.1 to 3 – claimants with proportionate costs and interest @7.5% per annum. The liability was fixed on the 1st respondent – owner of the Qualis vehicle. However, the Tribunal directed the 2nd respondent, being the insurer of the offending vehicle, to deposit the said amount within one month and recover the same from the 1st respondent. Aggrieved by the same, the appellant – Insurance Company preferred the present appeal.

2. The respondents 1 to 3 – claimants contended that they filed OP No.35 of 2005 contending that on 19.11.2004, the deceased and others were returning to Godavarikahni in a TATA Qualis vehicle bearing No.AP 11 H 7766 driven by its driver, 1st respondent in the OP, after attending a marriage function at Hyderabad. While so, at about 1.45 a.m, when the vehicle reached Renikunta outskirts, the 1st respondent drove the vehicle in a rash and negligent manner and tried

to overtake a lorry, but he lost control over the vehicle and dashed the back portion of the lorry. Due the said accident, the deceased and others sustained injuries and the deceased died on the spot. The claimants further contended that the deceased was aged about 55 years and he was working as Panchayath Secretary in Elkalpally Village and used to earn Rs.9,000/- per month. With the above contentions, they claimed Rs.50,000/- towards compensation under Section 140 of the Motor Vehicles Act (for short 'the Act').

3. The owner cum driver of the vehicle – 1st respondent in the OP remained *ex parte* before the Tribunal. The appellant – Insurance Company has filed counter opposing the claim of the claimants and disputing the liability itself.

4. On considering the entire evidence on record, both oral and documentary, the Tribunal has awarded an amount of Rs.50,000/- towards compensation with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of deposit, to the claimants. The Tribunal gave a specific finding that the accident was occurred due to rash and negligent driving of the TATA Qualis vehicle by its driver, and that if there is any breach of the terms of policy, the Insurance Company has to pay the compensation first and recover the same from the violater. Aggrieved by the same, the present appeal is filed by the Insurance Company.

5. Heard learned counsel for the appellant – Insurance Company and the learned counsel for the respondents – claimants.

6. According to the learned counsel for the appellant – Insurance Company, the vehicle was a private vehicle and that the deceased and others hired the said vehicle by negotiating with the 1st respondent and therefore, the Insurance Company is not liable to pay compensation. In support of the same, he referred Ex.B1 Insurance Policy and Ex.B2 charge sheet. Learned counsel further contended that as per Ex.B1 Insurance Policy the vehicle was registered as private vehicle and therefore, hiring the said vehicle is nothing but violating the terms and conditions of Ex.B1.

7. Learned counsel for the Insurance Company has relied upon the principle held by the Apex Court in **United India Insurance Company Limited v. Tilak Singh[1].** In the said case, it was held by the Apex Court that the Insurance Company was not liable to pay compensation towards injury suffered by the deceased who was a pillion rider in that case, as the insurance policy was a statutory policy, and hence, it did not cover the risk of death or bodily injury to gratuitous passenger.

8. On the other hand, learned counsel for the respondents – claimants relied upon the principle held by the Apex Court in

---

[1] **2006 ACJ 1441 (SC)**

Manuara Khatun v. Rajesh Kumar Singh[2]. In the said case, the Apex Court referred various other judgments of the Apex Court and considered the issue of entitlement of compensation due to the death of the gratuitous passenger in a private vehicle. The Apex Court by relying upon the principle held by it in **National Insurance Co. Ltd., v. Saju P. Paul [2013 (2) SCC 41],** held that the Insurance Company has to first pay the awarded sum to the claimants and then recover the same from the owner of the offending vehicle.

9. Coming to the case on hand, the Tribunal on the analysis of the entire evidence, and by observing that the 1st respondent - owner cum driver of the vehicle remained *ex parte* and he has not filed counter and did not come before the Tribunal for giving evidence in respect of the accident and also about the coverage by the Insurance company, held that the Insurance Company has to first pay compensation and later recover the same from the owner of the vehicle. With the said findings, the Tribunal has awarded Rs.50,000/- towards compensation to the claimants with proportionate costs and interest. This Court is satisfied with the said findings arrived at by the Tribunal and does not find any error in it warranting interference by this Court. Hence, the present appeal is devoid of merits and accordingly the same is liable to be dismissed.

---
[2] **(2017) 4 Supreme court Cases 796**

10. In the result, the appeal is dismissed confirming the Order and decree dated 17.03.2006 in O.P. No.35 of 2005 passed by the Tribunal. However, there shall be no order as to costs.

As a sequel, Miscellaneous Applications, if any, pending in the appeals shall stand closed.

K. LAKSHMAN, J

February 03, 2020
KTL