

THE HONOURABLE JUSTICE G. SRI DEVI
M.A.C.M.A. Nos.2580, 2682, 3400 and 4612 of 2008

COMMON JUDGMENT :

These appeals are filed by the petitioners, aggrieved of the common order and decree dated 01.03.2008 in O.P.Nos.353, 355, 354 and 356 of 2006 respectively on the file of the Motor Accidents Claims Tribunal (I-Additional District Judge) at Mahabubnagar.

2. On 22.11.2005, the first respondent has engaged the petitioners and other coolies to lift manure and dump the same in his fields with the help of offending tractor. After loading the manure in the tractor and when it was going to Harijanwada, due to the rash and negligent driving of Tractor-Trailer bearing No.AP 22 B 9930 and 9931 by its driver, the trailer turned turtle and all the coolies have fallen down from it and sustained injuries.

3. The Tribunal, on examining the oral and documentary evidence on record, by a common order, dated 01.03.2008 in O.P.Nos.353, 355, 354 and 356 of 2006, has exonerated the Insurance Company and fastened the liability against the first respondent, who was the owner of the tractor-trailer. All the petitioners in the aforesaid O.Ps. have filed these appeals and they are being taken up together, since all the O.Ps. have decided by a common order.

4. Heard both sides and perused the record.

5. While deciding the issues, the Tribunal held that R-1 has not paid premium to cover the insurance of coolies engaged for any purpose and that travelling of coolies in the tractor for any purpose is prohibited by Motor Vehicles Act. Even if it is accepted for argument sake that the petitioners were coolies engaged by the first respondent, their status will not be anything more than that of gratuitous passengers. Accordingly, the gratuitous passengers are not entitled to claim compensation. Further, the claim of the petitioner to realize the compensation from the Insurance Company was also rejected by the Tribunal and Insurance Company was exonerated from payment of the liability.

6. Learned counsel for the appellants/petitioners, during the course of arguments, has relied on the judgments of the Apex Court in **National Insurance Co.Ltd. v. Swaran Singh and others**¹ and **Manuara Khatun and others v. Rajesh Kumar Singh and others**². Learned counsel submits that in view of the judgments of the Apex Court in the aforesaid cases, the Insurance Company cannot be exonerated from its liability and the Insurance Company may be directed to pay the compensation first to the petitioners/appellants and the same may be recovered from the first respondent, who is the owner of the tractor-trailer bearing No.AP 22 B 9930 and 9931.

7. In Manuara Khatun's case (2 supra), the Apex Court held that "however, this Court keeping in view the benevolent object of the Act

¹ (2004) 3 SCC 297

² (2017) 4 SCC 796

and other relevant factors arising in the case, issued the directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of ‘pay and recovery’, by filing execution application against the insured.”

8. In view of the aforesaid decision of the Apex Court, since the offending vehicle was insured with the Insurance Company i.e., respondent No.2, the Insurance Company is liable to pay the compensation to the petitioners at the first instance, as awarded by the Tribunal in O.P.Nos. 353, 355, 354 and 356 of 2006, and then is entitled to recover the same from the insured i.e., owner of the vehicle-R.1, by filing execution proceedings. The appeals are accordingly disposed of. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE G.SRI DEVI

Date: 27.12.2021

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