THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No. 486 of 2020

JUDGMENT:

On account of death of one Rontela Sridhar Raju (hereinafter referred to as "the deceased") in the motor vehicle accident that occurred on 27.11.2011, his legal representatives filed M.V.O.P.No.268 of 2013 claiming compensation of Rs.8,86,000/- towards compensation. The Chairman, Motor Accidents Claims Tribunal-cum-VIII Additional District Judge (FTC), Warangal, by order dated 13.09.2019, allowed the O.P. by awarding compensation of Rs.9,61,400/- with interest at 9% p.a., to be payable by respondent Nos.1 and 3, i.e., the owner and driver of the offending vehicle, exonerating the insurance company on the ground that the deceased was an unauthorized passenger. Challenging the said findings, the owner of the offending the vehicle filed the present appeal.

2. Heard the learned counsel for the appellant and the learned Standing Counsel for the Insurance Company i.e., respondent No.6.

3. The main contention of the learned counsel for the appellant is that even though the evidence discloses that the deceased was traveling unauthorisedly in the crime vehicle i.e., Van bearing No.AP 36 TA 3213, owned by the appellant, still the insurance company cannot escape from its liability to pay the compensation.

4. On the other hand, the learned Standing Counsel for the Insurance Company, respondent No.6, has submitted that since the deceased was neither the owner of the goods nor was an employee under the owner of the vehicle i.e., appellant herein, the Tribunal has rightly termed the deceased as an unauthorized passenger and therefore, in view of the breach of terms and conditions of the policy, the Tribunal has rightly exonerated the insurance company from payment of compensation and the said finding needs no interference by this Court.

5. There is no dispute with regard to the manner of the accident and the rash and negligent driving on the part of the driver of the offending vehicle in causing the accident.

6. As seen from the record, the claimants claimed that the deceased was working as driver under the appellant i.e., owner of the crime vehicle. But in support thereof no evidence was let in by the claimants. On the other hand, the appellant as R.W.1 deposed before this Court that the deceased never worked as driver under him. In such circumstances the Tribunal has rightly held that the deceased was unauthorized passenger since the crime vehicle is a goods vehicle. But the fact remains that at the time of accident, Ex.B.1 policy was very much in force. Even as per the evidence on record, the deceased was traveling in the goods vehicle and he comes under the category of unauthorized passenger and his risk is not covered by the policy. In similar circumstances, in the case of **Manuara Khatun v. Rajesh Kr. Singh**[1], the Hon'ble Supreme Court dealt with the case of gratuitous passengers and held that the claimants are entitled for an order against the insurer to pay the awarded sum to the

[1] (2017) 4 SCC 796

claimants and then to recover the said amount from the insured in the same proceedings. Further, in a recent judgment in **Anu Bhanvara v. Iffco Tokio General Insurance Company Limited[2]**, the Hon'ble Supreme Court dealt with the similar issue by referring its earlier judgments in **National Insurance Co. Ltd. V. Baljit Kaur[3]** and **Manuara Khatun** (supra) apart from other judgments, invoked the principle of 'pay and recover', in the peculiar facts and circumstances of the case. In **Manuara Khatun** (supra), the Apex Court at para No. 16 held as under:-

> "16. This question also fell for consideration recently in Manager, National Insurance Company Limited v. Saju P. Paul and another (2013 (2) ALD 95 (SC)), wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was traveling in offending vehicle as "gratuitous passenger" and hence, the Insurance Company cannot be held liable to suffer the liability arising out of accident on the

[2] Laws (SC) 2019 840
[3] 2004 ACJ 428

strength of the insurance policy. However, this Court keeping in view of the benevolent object of the Act 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 recover"."

7. In view of the above, the appeal is allowed. Following the doctrine '*pay and recover*', the Insurance Company-6th respondent herein is directed to pay the compensation amount to the claimants, at the first instance and thereafter recover the same from the owner of the offending vehicle i.e., the appellant herein without initiating any separate proceedings. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G.PRIYADARSINI

23.02.2023
tsr

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No. 486 of 2020

DATE: 23-02-2023