HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1345 OF 2006

JUDGMENT:

The instant appeal is preferred by the 2nd respondent – M/s National Insurance Company Limited, aggrieved of the order and decree, dated 07-01-2005, in M.V.O.P. No.285 of 2002, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Kadapa (for short 'the Tribunal'), whereby and whereunder, a sum of Rs.2,00,000/- (Rupees two lakhs) was awarded as compensation with interest at 9% per annum as against the claim of Rs.2,50,000/- (Rupees two lakhs and fifty thousand) laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the death of one Yennuboina Venkata Subbaiah, more particularly, aggrieved of the direction initially to pay and recover, despite the finding recorded by the Tribunal that the vehicle was hired and, thus, violated the terms and conditions of policy under Ex.B-1.

2. The appellant herein is respondent No.2 - insurer, in the O.P. before the Tribunal, while respondent Nos.1 and 2 are the petitioners and respondent No.3, who is owner of Tata Sumo bearing registration No.TN 4L 1000, is respondent No.1.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 07-10-2001, the deceased –

Yennuboina Venkata Subbaiah, since the diesel in the lorry in which he was working as cleaner, had exhausted on the mid-way, in order to fetch the diesel, boarded a Tata Sumo bearing registration No.TN 4L 1000 owned by the 1st respondent and insured with the 2nd respondent and while it was proceeding on the way while crossing Penna river which was in spate, despite the warnings by the passengers and police, the driver negligently driven it on the bridge over Penna and when it reached middle of the bridge, due to overflow of flood water, the Tata Sumo was washed away and body of the deceased could not be traced as he was also washed away in the floods and one month thereafter, his body was found. Therefore, the petitioners, being the legal heirs of the deceased, filed the claim petition seeking a sum of Rs.2,50,000/- as compensation.

5. Respondent No.1, owner of the Tata Sumo, remained *ex parte* before the Tribunal.

6. Respondent No.2 – Insurance Company opposed the claim, raising various defences available to it, such as violation of terms and conditions of the policy.

7. Based on the pleadings, the Tribunal framed the following issues about fixing responsibility for the accident.

> "(1) Whether the deceased Yennuboina Venkata Subbaiah died in motor vehicle accident on 7.10.2001 due to rash and negligent driving of TATA SUMO bearing No.TN.4L-1000 by its driver ?
>
> (2) Whether the petitioners are entitled for compensation and if so to what amount and from whom ?
>
> (3) To what relief ? "

8. During inquiry, on behalf of the petitioners, the 1st petitioner examined himself as PW.1 and marked Exs.A-1 to A-6. On behalf of the contesting respondent, RW.1 was examined and marked Exs.B-1 and B-2.

9. On issue No.1, the Tribunal held that due to rash and negligent driving of the driver of the Tata Sumo, the accident has occurred. On issue No.2, the Tribunal determined the compensation at Rs.2,00,000/- taking the monthly income of the deceased as Rs.2,000/-, age of the 2nd petitioner as 43 years, as the deceased died in an unmarried status and applied multiplier '11.5' by deducting 1/3rd of the amount, arrived at Rs.1,84,000/-, towards loss of dependency. The Tribunal also awarded a sum of Rs.15,000/- towards loss of estate and Rs.1,000/- towards funeral expenses and, thus, a sum of Rs.2,00,000/- was awarded as compensation. However, in paragraph No.6 of the order, while dealing with the defence taken by the Insurance Company as regards violation of terms and conditions of the policy while observing that Ex.B-1 policy shows that the insured's vehicle should be used only for social, domestic and pleasure purposes of the owner and it should not be used for hire or reward, but the police record through Exs.A-1 to A-4 and A-6 show that the 1st respondent had hired the vehicle to one Sivasankar and when the vehicle was under hire, the deceased boarded, but still, observing that irrespective of the question whether the deceased was paid passenger or not, since he boarded the vehicle when the vehicle was under hire, the 1st respondent had violated the terms and conditions of policy and, therefore, the 2nd respondent is not

liable to indemnify the liability of the 1st respondent, still, further observing that it is well settled that Insurance Company should pay, in the first instance, the compensation to the claimants and then it can recover the same from the owner of the vehicle and, accordingly, given such a direction.

10. It is the aforementioned direction which the Insurance Company is now challenged in the present appeal, contending in the grounds of appeal that despite the finding being recorded by the Tribunal, ought not to have given such a direction to satisfy the petitioners initially and then to recover the same which is contrary to law laid down by the Hon'ble Supreme Court.

11. Heard Sri T. Ramulu, learned counsel for the appellant – Insurance Company and Sri S. Ramachandra Prasad, learned counsel for respondent Nos.1 and 2 - petitioners. None appears for the 3rd respondent – owner, despite notice being served.

12. The finding recorded by the Tribunal in paragraph No.6 of the aforementioned order is not challenged by the petitioners. This apart, a perusal of Ex.B-1 would clearly reflect that such a condition has been imposed reading thus:

> "Use only for social domestic and pleasure purposes and for the insured's own business.
> This policy does not cover:
> The use for hire and reward or for organized racing and pace making, reliability trial and speed-testing, (The carriage of goods other than samples) in connection with any trade or business or for any purpose in connection with the motor trade."

It is observed by the Tribunal that Exs.A-1 to A-4 and A-6 also would clearly reflect that the 1st respondent, owner of the vehicle, had hired the vehicle to one Sivasankara and when the vehicle was under hire, the deceased boarded it. In such an event, the Tribunal ought not to have made such a finding directing the Insurance Company to initially deposit the amount and then to recover the same from the 1st respondent. In fact, the Tribunal has not referred to any decision, but vaguely mentioned that the law is well settled to direct the Insurance Company to initially deposit the amount and then recover the same from the owner. It is submitted by the learned counsel for the Insurance Company that the Insurance Company has already deposited half of the amount as per the directions given by this Court and the same was also withdrawn by the petitioners. In that view of the matter, the appeal deserves to be allowed.

13. In the result, the appeal is allowed in part, setting aside the direction given by the Tribunal directing 2nd respondent - Insurance Company to deposit the amount and then recover the same from the 1st respondent. The appellant – 2nd respondent is directed to recover the amount which was deposited by it from the 1st respondent. Except to that extent, in all other respects, the order is maintained. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

March 12, 2015.
Mgr