

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1034 of 2005

JUDGMENT

The instant appeal is preferred by the third respondent-New India Assurance Company Limited aggrieved of the order dated 17.01.2005 in O.P.No.953 of 2000 on the file of VI Additional District Judge, Fast Track Court, East Godavari, Rajahmundry, whereby and where-under a sum of Rs.1,14,000/- was granted for the injuries sustained by the petitioner in a road accident on 06.02.2000, assailing the finding recorded in paragraph No.26 of the order that no liability can be fastened on the third respondent company to indemnify the second respondent owner and consequently liability to pay compensation to the petitioner cannot be fastened on third respondent company and as such, instead of dismissing the claim against the third respondent company, still, directing the third respondent to pay compensation amount to the petitioner initially and recover the same from the second respondent-owner by initiating execution proceedings without filing a separate suit.

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

3. The facts, in brief, are that the petitioner used to work as a Jattu coolie in a quarry lorry and also on the accident vehicle. On 06.02.2000, the petitioner requested the first respondent-driver to get into the lorry intending to return to Yeleswaram Village from Chinnampeta Village and when the said lorry reached Union Bank

of Yeleswaram, the petitioner requested the first respondent to stop the lorry and while he was getting down from the lorry, the first respondent negligently driven and moved it at high speed, as a result, he fell down from the lorry and came under rear wheels of the lorry, which ran over on his both legs and he was immediately shifted to Government Hospital, Yeleswaram and from there to Government General Hospital, Kakinada, where he took treatment from 08.02.2000 to 16.03.2000 as inpatient. According to him, even on the date of making the claim, he was under treatment as outpatient. According to him, due to the accident, he is unable to pursue his occupation and, therefore, sought to grant compensation of Rs.1,00,000/- having filed the petition under Section 166 of Motor Vehicles Act, 1988 read with Rule 455 of APMV Rules.

4. The first and second respondents being the driver and owner of the lorry respectively, remained *ex parte* before the Tribunal. The third respondent-Insurance Company opposed the claim raising various pleas while requiring the petitioner to prove that the injured was a jattu coolie and sought to dismiss the claim petition. .

5. The Tribunal, basing on the pleadings, framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining Medapati Ramachandra Reddy and Dr. Y. Venkateswar Rao as P.W.3 and marked Exs.A1 to A7 to substantiate his claim for compensation. On behalf of the third respondent, Jan Md. Imrahn was examined as R.W.1 and one M. Govindarao was examined as R.W.2 and marked Exs.B1 to B3, which are authorisation letter, attested copy of 'B' register extract dated 24.11.2004 and insurance policy to

prove the violation of conditions of the policy.

6. The Tribunal, on appraisal of evidence let in by the petitioner, held issue No.1 in favour of the petitioner. On issue No.2, having elaborately discussed the fact-situation as well as the decisions on which reliance was placed by the learned Standing Counsel for the third respondent referred to in paragraph No.23 of the order in regard to violation of conditions of policy-Ex.B3 and while answering the respective contentions held in paragraph No.'26' thus;

“In consideration of Exs.A1 and A2 coupled with Exs.B2 and B3 and the evidence of R.Ws.1 and 2, I hold that the petitioner was travelled not as a jattu-coolie in the vehicle in question, which is registered as a goods-carrier vehicle, which is a violation of terms and conditions of Ex.B3-Insurance Policy and apart from this Ex.B3 does not cover the risk other than 3 employees and 6 coolies. In consideration of principle laid down in the cases cited by the 3rd respondent counsel, I hold that there is no liability on R3-company to indemnify R2-owner and consequently liability to pay compensation to the petitioner cannot be fastened on R3-company and as such the claim against R3 company is hereby dismissed. However, R3-company is directed to pay the compensation amount to the petitioner initially and recover the same from R2-owner by initiating execution proceedings without filing a separate suit”.

7. Aggrieved by the aforesaid direction to pay the compensation initially and recover the same from the second respondent owner of the vehicle, the instant appeal is preferred contending in the grounds of appeal that the Tribunal somehow overlooked the fact that the judgments relied on by the Tribunal in directing the appellant to pay compensation and recover from the owner would not apply to the present case since the order under challenge was pronounced subsequent to the decision rendered in **NEW INDIA ASSURANCE COMPANY LIMITED v. ASHA**

RANI^[1] and the principle of 'pay and recover from the owner' is only applicable to the claims disposed of following the judgment in **NEW INDIA ASSURANCE COMPANY v. SATPAL SINGH**^[2].

8. Heard Sri Kota Subba Rao, learned Standing Counsel for the appellant-New India Assurance Company Limited. Despite service of notice on respondent No.1, who is the petitioner before the Tribunal, none appears for him. It is endorsed in the cause title of the instant MACMA that respondent No.2, who is driver of the lorry, is not necessary party. The instant appeal is dismissed against respondent No.3, who is owner of the crime vehicle bearing lorry No.ABV 3208, by the orders of this Court, dated 03.01.2012.

9. The learned Standing Counsel for appellant insurance company contends that, though, the petitioner claims that he was a 'jattu coolie', in view of the definite finding recorded by the Tribunal, which stood unchallenged by preferring any appeal by the petitioner, it is not open for the learned counsel for the petitioner to raise the said point once again.

10. Thus, the controversy is limited to the extent of examining whether the Tribunal was right in giving direction to the appellant herein initially to pay compensation amount to the petitioner and recover the same from the second respondent owner by initiating execution proceedings without filing a separate suit.

11. The order under challenge was passed on 17.01.2005. Thus, the order under challenge was passed subsequent to the decisions rendered by the Honourable Apex Court in **ASHA RANI'S** case

(1 supra), and in **NATIONAL INSURANCE COMPANY LIMITED v.**

BALJIT KAUR^[3]. The relevant observations in **Baljit Kaur's** case contained in paragraph '21' are thus;

“The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be sub- served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the tribunal in such a proceeding.

Therefore, the Tribunal is not right in making such a direction and the said direction is liable to be set aside and accordingly, the said direction is set aside. Consequently, the order under challenge is set aside, to the extent indicated above by allowing the appeal. It is clarified that the order under challenge in all other respects is maintained.

12. Accordingly, the appeal is allowed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

31st March, 2015

sj

[\[1\]](#) (2003) 2 SCC 223

[\[2\]](#) (2000) 1 SCC 237

[\[3\]](#) (2004) 2 SCC 1