**HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

**M.A.C.M.A.Nos.1025 and 1078 of 2005**

**COMMON JUDGMENT:**

Both these appeals arise from one and the same accident, though, the claims are different, and registered as O.P.Nos.335 and 337 of 2001 on the file of Chairman, Motor Accidents Claims Tribunal – cum- IV Additional District Judge (Fast Track Court), Anantapur. By order dated 04.02.2005, on which day both the claim petitions were disposed of, the Tribunal awarded compensation of Rs.60,000/- each to the petitioners for the death of their wives respectively, who died in a road accident while travelling in a van as passengers and fastened liability on the owner and Insurance Company. Aggrieved by which, the Insurance Company preferred the instant appeals.

For convenience sake, the parties hereinafter referred to as they were arrayed before the Tribunal in the O.Ps.

The fact situation, occurring in the instant case, is that on 12.05.2001, both the deceased, along with 50 members, started from Nutimadugu Village to attend marriage at Venkatapuram near Hampi in Karnataka in Van bearing
No. 407-AP-02-U-2598, owned by the first respondent, and when they reached LB Nagar, at about 4.00 p.m, since the driver of the van drove it in a rash and negligent manner at high speed, he lost control over the vehicle, due to which, it fell into the roadside pit causing death of the deceased besides injuries to number of passengers, and the concerned Station House Officer registered crime against the driver for the offences under Sections 337, 338 and 304-A IPC. The petitioners herein claim Rs.1.00 lakh each for the death of the deceased.

First respondent, owner of the vehicle, remained ex parte.

Second respondent opposed the claim.

As many as seven issues were framed fixing the responsibility for taking place of accident by the Tribunal.

The Tribunal has given findings on issue Nos.1 and 5 favouring the petitioners. On issue Nos.2 to 4, the Tribunal also found favour with the petitioners. On issue No.6, the Tribunal, despite finding that Van was a goods vehicle, still, by making certain observations in paragraph '14', placing reliance on the decisions rendered prior to the decision of the Hon'ble Supreme Court in New India Assurance Company Limited v. Asha Rani, made respondent Nos.1 and 2 jointly and severally liable to pay compensation of Rs.60,000/- each to the petitioners respectively.

It is the aforesaid orders and decrees which are under challenge in the instant appeals preferred by the second respondent - Insurance Company contending in the grounds that the Tribunal, despite evidence that the deceased were travelling as unauthorized passengers in a goods vehicle, still, fastened liability on the appellant - Insurance Company though, it is not liable to pay compensation as per the judgments of the Apex Court.

Heard Sri Naresh Byrapaneni, learned counsel for the appellant – Oriental Insurance Company Limited, and
Sri K.Maheswara Rao, learned counsel for respondent No.1 – claim petitioners, in both the appeals. The second respondent, though, served with notice, none appears. However, he remained ex parte before the Tribunal.

It is the submission of the learned counsel for the appellant that, in view of the decisions of the Apex Court in Asha Rani (1 supra) and M/s. National Insurance Co. Ltd v. Baljit Kaur, the Tribunal was not right in fastening liability on the Insurance Company since the deceased were travelling as unauthorized passengers in a goods vehicle at the relevant time. Learned counsel has also pointed out the observations made by the Tribunal in paragraph '12' which reads thus:

"As already held that in Issue No.1 it is established that the deceased died in the accident and the accident was occurred due to rash and negligent driving of the drier of crime van. No doubt the deceased and others were travelling in 407 Van which is a goods vehicle. As seen from the rulings cited by the learned counsel for respondent No.2 it is held that when passenger was travelling in goods vehicle and met with the accident resulting in bodily injury or to the death, the Insurance Company is not liable to pay the compensation. But the facts and circumstances of those rulings are different from the facts and circumstances of the case on hand for the reason that in those cases some stray passengers travelled unauthorisedly in the goods vehicle which met with the accident. In the instant case, though it is a goods Van, with the permission of owner, a marriage party, including the deceased, engaged the same to attend a marriage in another village. When they travelled in the vehicle for the purpose of attending the marriage naturally they would have taken their goods along with them required for marriage. As seen from the ruling report in 2002 ACJ 539 cited by the counsel for petitioner in the case of United India Insurance Company Ltd., v. Govindan, it is clearly held that 60 persons were travelling with permission of the owner in a truck along with their goods and articles intended for marriage in a neighbouring village and when the accident took place, the Insurance Company was also held jointly liable to pay the compensation. I, therefore, feel the facts and circumstances of the said case are similar and applicable to the present case. It is held in ruling New India Assurance Co. Ltd. v. Rajendra Singh reported in 2000 ACJ 1039 that any person is a third party and risk is covered though travelled in a private car or private jeep or a goods truck or even a two wheeler. Under these circumstances, I held that respondent No.2, Insurance Company, cannot escape its liability in paying the compensation to the deceased, as per the principle laid down in the rulings cited by the learned counsel for the petitioner. Admittedly, vehicle of respondent No.1 is insured with respondent No.2 and the policy also shows that it was in force as on the date of accident. If at all, there is violation on the part of respondent No.1, owner, respondent No.2 is at liberty to recover the compensation awarded to the petitioner. Hence, respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to be awarded for the death of the deceased."

Learned counsel for respondent No.1 submits that the Insurance Company be directed to initially deposit the amount and recover the same from the owner of the vehicle.

Now the law is well settled that even the direction to pay and recover cannot be made in view of the decision of the Hon'ble Supreme Court in Baljit Kaur (2

supra). The observations, contained in paragraph '21', 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 New India Assurance Co. v. Satpal Singh. The said decision has been overruled only in Asha Rani (1 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."

Since it is not in dispute that the deceased were travelling in goods vehicle, they can be construed as unauthorized passengers, and the violation of terms and conditions of policy are fundamental in nature.

The Appeals are, accordingly, allowed setting aside the orders and decrees dated 04.02.2005, passed in O.P.Nos.335 and 337 of 2001 on the file of Chairman, Motor Accidents Claims Tribunal – cum- IV Additional District Judge (Fast Track Court), Anantapur. However, in other respects, to the extent of fastening liability on the owner, first respondent in the claim petition, the amount determined by the Tribunal and the rate of interest are not disturbed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand disposed of.

**A.SHANKAR NARAYANA,J**

Date: 16.04.2015

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