HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.615 of 2005

JUDGMENT:

Aggrieved of the order dated 17.01.2005 in M.V.O.P.No.360 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Cuddapah (for short, 'the Tribunal'), whereby and whereunder the Insurance Company was exonerated from its liability to pay compensation on the ground that the risk of the petitioner who claimed himself to be cleaner in the accident vehicle was not covered by the policy, Ex.B.1, the instant appeal is preferred.

2. The appellant herein is the petitioner, while the respondent Nos.1 and 2, who are the owner and insurer of the jeep bearing registration No.AP 03K 2589 respectively, were respondents in the original petition.

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

4. The facts in brief are that the petitioner claiming himself as the cleaner in the jeep bearing registration No.AP 03K 2589 belonging to one Rajendra Prasad and drawing salary of Rs.3,000/- per month, started with passengers on 16.01.2002 driven by its owner Rajendra Prasad and when it reached near Moola Vanka Bridge at about 4-00 p.m., while giving side to the lorry coming in its opposite direction, could not control the jeep, on account of which, the jeep went off the road and fell towards its side and caused instantaneous death of the driver-cum-owner of the jeep and injuries to other inmates. The petitioner claims that he sustained grievous injury and immediately shifted to Government Hospital, Cuddapah for treatment and from there he was shifted to S.V.R.R.Hospital, Tirupathi for better treatment.

According to him, for two months, he has undergone treatment and spent Rs.20,000/- towards medical expenses. He sustained fracture to his femur and grievous injury to his head. Therefore, he claimed a total sum of Rs.1,50,000/- as compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

5. Before the Tribunal, the 1st respondent did not contest the claim, the 2nd respondent opposed the claim by taking a specific plea that the policy does not cover the risk of the petitioner, and, therefore, it was not obligated with the duty to indemnify the 1st respondent, and sought to dismiss the claim.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the petitioner examined himself as P.W.1 besides examining one Shaik Mohammad Rafi and two doctors, viz., Dr. A.Sudhakar Reddy and Dr.C.Sanjeevaiah as P.Ws.2 to 4 and marked Exs.A.1 to A.6 and Ex.X.1, which is case sheet, by summoning the same; whereas on behalf of the 2nd respondent-Insurance Company, one D.Muneppa, who is its official in the local branch, was examined as R.W.1 and marked Exs.B.1 and B.2, which are copies of insurance policy and the certificate of registration issued by the Additional Registering Authority, Tirupathi.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the parties, held on issue No.1 that due to rash and negligent driving of the driver of the jeep, who died in the same accident, the accident was occurred. On issue No.2, the Tribunal, basing on the evidence of P.W.3 granted Rs.6,000/- towards loss of earnings for four months, Rs.5,000/- towards miscellaneous expenses including transport and attendant charges, Rs.50,000/- towards pain,

suffering and inconvenience, and, thus, granted a total sum of Rs.61,000/- towards compensation, while discarding Ex.A.5 as P.W.3 has not spoken to it. The Tribunal, however, dismissed the claim against the 2nd respondent-Insurance Company by recording a finding that the risk of the injured-cleaner was not covered and premium was not paid as per Ex.B.1.

8. It is the aforementioned order which is challenged by preferring the instant appeal contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record and taken Rs.1,500/- as monthly income as against Rs.3,000/- as asserted by P.W.1 and that the Tribunal was not right in holding that the 2nd respondent is not liable to pay compensation and placed reliance on a judgment of the Hon'ble Supreme Court in ***National Insurance Company Ltd., v. Baljit Kaur and others***[1] and sought to fasten the liability on the 2nd respondent-Insurance Company by setting aside the order under challenge.

9. Heard Sri D.Kodanda Rami Reddy, learned counsel for the appellant and Smt. A.Jayanthi, learned Standing Counsel for the 2nd respondent-Insurance Company. The appeal against respondent No.1-owner of the accident vehicle was dismissed for default on 02.01.2012. However, dismissal of the appeal for default against the 1st respondent-owner is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in ***Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others***[2], wherein it is held that:

> "If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged

either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

10. Learned counsel for the petitioner-appellant contended that the Tribunal ought to have taken monthly income of the petitioner at Rs.3,000/- instead of Rs.1,500/- fixed by the Tribunal.

11. A perusal of the order under challenge shows that no material is placed before the Tribunal in substantiating that the petitioner was drawing a monthly salary of Rs.3,000/-. Therefore, the finding recorded by the Tribunal cannot be disturbed.

12. Turning to the amount granted by the Tribunal under various heads mentioned above, making it to a sum of Rs.61,000/- that was construed as just and adequate compensation in the present case.

13. Turning to the question as to whether the 2nd respondent can be fastened with liability, the learned counsel for the petitioner-appellant placed reliance on the decision of the Hon'ble Supreme Court in ***Baljit Kaur's*** case (1 supra) that it would assist the petitioner in fastening liability on the 2nd respondent-Insurance Company. The learned counsel for the petitioner-appellant has relied on paragraph-19 of the said judgment, which is, thus:

"In *Asha Rani* [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] it has

> been noticed that sub-clause (i) of clause (b) of sub-section (1) of Section 147 of the 1988 Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers travelling in the vehicle. The premium in view of the 1994 amendment would only cover a third party as also the owner of the goods or his authorized representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise."

Further, the Hon'ble Supreme Court in paragraph-20 observed thus:

> "It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people."

14. Thus, the above decision would not render any assistance to the petitioner to fix liability on the Insurance Company. This apart, Ex.B.1, as observed by the Tribunal, basing on which the finding was recorded, would clearly show that no premium was paid to cover the risk of the petitioner. Even there cannot be a situation where a person can be employed as a cleaner in a jeep. Furthermore, the order under challenge was rendered by the Tribunal subject to the decisions of the Hon'ble Apex Court in ***New India Assurance Company Limited v. Asha Rani and others***[3] and ***Baljit Kaur's*** case (1 supra). Thus, viewed from any angle, there is absolutely no merit in the appeal.

15. In the result, the appeal is dismissed confirming the order and decree dated 17.01.2005 passed by the Tribunal in M.V.O.P.No.360 of 2002. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

10th February, 2015

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[1] 2004 ACJ 428 (SC)

[2] 2001(1) ALT 495 (D.B.)

[3] (2003) 2 SCC 223