HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1516 OF 2005

JUDGMENT:

The instant appeal is preferred by the 2nd respondent – M/s. United India Insurance Company Limited in M.V.O.P. No.761 of 2003, aggrieved by the order, dated 31-03-2005, passed by the learned the Chairman, Motor Accidents Claims Tribunal – cum – V Additional District Judge (Fast Track Court), Kurnool, (for short 'the Tribunal'), in so far as the direction given by it to the effect that the Insurance Company should first satisfy the amount awarded as compensation and then to realize the same from owner of the vehicle - respondent No.1 herein. The Tribunal, by the said order, granted a sum of Rs.52,000/- (Rupees fifty two thousand) as against the claim of Rs.1,00,000/- (Rupees one lakh) laid by the petitioner under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), with interest at the rate of 9% per annum.

2. The appellant and respondent No.1 herein, who are insurer and owner of lorry bearing registration No.AP 21V 2457, are respondent Nos.1 and 2 in the M.V.O.P. before the Tribunal, while respondent No.2 is the petitioner.

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

4. The facts, in brief, are that on 17-09-2003, one Bhoolakshmi was travelling in a lorry bearing registration No. AP

21V 2457 from Adoni to Kosgi, and when the lorry reached a spot situated at a distance of 3 kilometres away from Kosgi, since the driver drove it in a rash and negligent manner and applied sudden brake, she fell down from the lorry and sustained injuries. She was immediately shifted to a nearby hospital, where she was declared dead. The petitioner being father, laid the claim for grant of Rs.1,00,000/- as compensation against respondent Nos.1 and 2, who are owner and insurer of the lorry, respectively.

5. Respondent No.1, owner of the lorry, filed counter, resisting the claim.

6. Even respondent No.2 opposed the claim by filing written statement. It has taken a specific plea that the deceased was travelling as a passenger in goods vehicle and, therefore, no liability can be fastened on it. It reserved its defences to be raised at subsequent stage.

7. The Tribunal has framed three issues about the responsibility for the accident.

8. During inquiry before the Tribunal, the petitioner examined himself as PW.1 and an eye-witness as PW.2 and marked as Exs.A-1 to A-4. To prove violations, one K. Venkoba Rao was examined by the Insurance Company as RW.1 and marked Ex.B-1, copy of insurance policy.

9. So far as rash and negligent driving touching issue No.1 is concerned, the Tribunal held that due to negligent driving of the lorry driver, the accident had occurred. On issue No.2, the Tribunal by referring to the decisions in **Oriental Insurance Company Limited, Karimnagar v. Yedla Susheela and**

others[1], National Insurance Company Limited v. Baljit Kaur[2], recorded the finding that the deceased was travelling as an unauthorized passenger. Even the Tribunal rejected the contention of the petitioner to take the earnings of the deceased at Rs.20 to 25 per day on the ground that the petitioner cannot claim himself to be a dependant on the deceased. But, however, the Tribunal has taken the age of the petitioner as 50 years, and applied multiplier '11' and the income per day as Rs.25/- working out the monthly income at Rs.750/-, deducted 1/3rd there-from and arrived at Rs.6,000/- as annual income and her contribution to the petitioner at Rs.3,000/- and, thus, arrived at Rs.33,000/-. However, observing that under 'no-fault liability' Rs.50,000/- would be awarded, the Tribunal granted the same and another sum of Rs.2,000/- towards funeral charges, totaling to Rs.52,000/- with interest at 9% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal preferred by the Insurance Company on the ground of violation of conditions of the policy, and to set aside the liability fastened on it, though, the Tribunal directed the Insurance Company to deposit the entire amount initially, and then to recover the same from respondent No.1, owner of the lorry.

11. Heard Sri V. Sambasiva Rao, learned counsel for the appellant – 2nd respondent, and Sri A. Jaya Sankara Reddy, learned counsel for respondent No.2. Though notice served on respondent No.1, none appears.

12. The learned counsel for the appellant submits that in

view of the decisions of the Hon'ble Apex Court in **New India Assurance Company Limited v. Asha Rani and others**[3]**;** **Baljith Kaur's Case** (Supra 2), and **National Insurance Company Limited v. Chella Bharathamma & others**[4], no liability can be fastened on the Insurance Company, as the deceased was travelling in a goods vehicle as an unauthorized passenger which is a fundamental violation of terms and conditions of the policy. On the other hand, the learned counsel for respondent No.2 herein submits that the compensation awarded by the Tribunal is very meager though, the deceased was a minor, and no interference is warranted.

13. It is not in dispute that the deceased was travelling in a goods vehicle at the relevant time as a passenger. Irrespective of the fact that she was a fare-paid passenger or gratuitous passenger, there has been fundamental violation of the terms and conditions of the policy, and the law laid down by the Hon'ble Supreme Court in **Asha Rani's Case** (Supra 3), **Baljith Kaur's Case** (Supra 2), and **Challa Barathamma's Case** (Supra 4), squarely applies. Therefore, the liability fastened on the Insurance Company initially to pay the amount and then recover the same from respondent No.1, owner of the vehicle, is hereby set aside. However, keeping in view, the fact that the Insurance Company has already deposited half of the amount awarded and even permitted the petitioner to withdraw the same without furnishing any security as ordered on 01-08-2006, the appellant – respondent No.2/insurer is directed to recover the said amount from respondent No.1 – owner of the vehicle; and respondent No.2 - petitioner, however, is entitled to recover the balance amount from

respondent No.1 - owner of the vehicle.

14. Accordingly, the appeal is allowed, and the order and decree passed by the Tribunal are modified to the extent indicated in the above while confirming in all other respects including the liability of respondent No.1. No order as to costs.

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

A. SHANKAR NARAYANA, J

December 28, 2015.
Mgr

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[1]. 2002 (2) ALD 604
[2]. 2004 SC 1531
[3]. (2003) 2 SCC 223
[4]. (2004) 8 SCC 517