THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.816 OF 2009

JUDGMENT:

Being not satisfied with the judgment and award dated 24.10.2008 passed in M.V.O.P.No.757 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Kadapa at Rajampet (for short, 'the Tribunal'), wherein and whereunder an amount of Rs.1,50,000/- was awarded as against the claim of Rs.3,25,000/-, the appellants/petitioners preferred the present appeal.

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

3. The facts leading to filing of the present appeal are, briefly, as follows:

On 29.05.2004 at about 4:45 PM, one P.Rajanna was boarded an auto bearing No.AP-04-U-6597 along with vegetables to go to Railway Kodur from Tirupati. When the auto reached near Settigunta – Railway Kodur, the driver of the auto had driven the same in a rash and negligent manner due to which, the auto turned turtle. The Station House Officer, Kodur Police Station registered a criminal case against the driver of the auto for the offence punishable under Section 304-A I.P.C. Due to injuries, P.Rajanna (hereinafter referred to as 'the deceased') died on the spot. By the time of accident, the deceased was aged about 45 years and used to earn Rs.7,000/- per month as vegetable vendor. The petitioners are dependants on the income of the deceased. The auto which belongs to respondent No.1 was insured with respondent No.2 – Insurance Company as on the date of accident. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.3,25,000/- to the petitioners. Hence, the petition.

4. Respondent No.1 remained *ex-parte.* Respondent No.2 filed written statement denying all the material averments made in the petition *inter alia* contending that by the time of accident, respondent No.1 allowed the deceased to travel as an unauthorised passenger in the goods auto and thereby, violated the terms and conditions of the policy. Therefore, there is no obligation on the part of this respondent to indemnify the liability of respondent No.1. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

> (1) Whether the accident did not occur due to rash and negligent driving of Auto bearing No.A.P.04-6597 belonging to respondent No.1 by its Driver?
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> (2) Whether the petitioners are entitled for compensation, for the death of P.Rajanna, if so, to what amount and from whom?
>
> (3) To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 and A.2 were marked. On behalf of the contesting respondent, RW.1 was examined and Exs.B.1 and B.2 were marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto which resulted in the death of the deceased; and allowed the petition in part by awarding compensation of Rs.1,50,000/-; and the petition against respondent No.2 was dismissed.

8. Feeling aggrieved by the judgment and award of the Tribunal,

the petitioners preferred the present appeal.

9. Heard Sri P.Srinivas, the learned counsel for the petitioners, Sri Balaji Medamalli, the learned counsel for respondent No.1 and Sri R.K.Suri, the learned Standing Counsel for respondent No.2 – National Insurance Company Limited.

10. Learned counsel for the petitioners submitted that the Tribunal has misconstrued the terms and conditions of Ex.B.1 – Policy and dismissed the petition against respondent No.2. He further submitted that the Tribunal failed to consider the fact that by the time of accident, the deceased was travelling in the auto along with his goods and therefore, respondent No.2 has to indemnify the liability of respondent No.1.

11. Learned counsel for respondent No.1 submitted that Ex.B.1 – Policy covers the risk of owner of the goods or authorised representative of the owner of the goods and the same is not considered by the Tribunal in right perspective.

12. Learned Standing Counsel for respondent No.2 submitted that Ex.B.1 – Policy does not covers the risk of unauthorised passenger. He further submitted that the finding of the Tribunal that by the time of accident, the deceased was travelling in the auto as an unauthorised passenger is supported by oral and documentary evidence.

13. Now the points that arise for consideration in this appeal are:

1. Whether the compensation awarded by the Tribunal is just and reasonable or not?

2. Whether respondent No.1 had violated the terms and conditions of the policy so as to absolve the liability of respondent No.2?

Point No.1:

14. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident occurred

due to the rash and negligent driving of the driver of the auto. The said finding became final in view of non-filing of the appeal or cross-objections by the respondent Nos.1 and 2. I am fully agreeing with the finding recorded by the Tribunal with regard to the manner of the accident.

15. As per the averments made in the petition, the deceased was aged about 45 years. In Ex.A.2 – Post-mortem Certificate, the age of the deceased was shown as '49' years. As per **Sarla Verma v. Delhi Transport Corporation**[1]**,** the appropriate multiplier to be taken for the age group of 46-50 is '13'. The Tribunal applied correct multiplier. Except the self-served testimony of PW.1, there is no other convincing evidence to establish the income of the deceased. The Tribunal arrived at a conclusion that the deceased may earn Rs.15,000/- per annum. Even by attending coolie work, the deceased may earn Rs.2,100/- per month. Out of which, 1/3rd shall be deducted towards personal expenses of the deceased. The deceased may contribute Rs.1,400/- per month. Per annum, it comes to Rs.16,800/-. The loss of dependency comes to Rs.2,18,400/- (16,800 X 13). The Tribunal rightly awarded an amount of Rs.20,000/- under different heads. Thus, the amount of compensation to which the petitioners are entitled to under various heads is as follows:

01.	Loss of dependency	Rs.2,18,400/-
02.	Funeral and obsequies expenses	Rs. 2,000/-
03.	For loss of Love and affection	Rs. 10,000/-
04.	Loss of consortium exclusively to petitioner No.1	Rs. 8,000/-
	Total:	Rs.2,38,400/-

The amount of compensation awarded under various heads is just and reasonable to meet the ends of justice.

POINT No.2:

16. The crucial question that falls for consideration is whether by the time of accident, the deceased was travelling as the owner of the goods or as an unauthorised passenger? It is not in dispute that by the time of accident, respondent No.1 was also travelling in the auto. Respondent No.1 is the *de facto* complainant. As per the recitals of Ex.A.1 – F.I.R., the deceased boarded the auto at Tirupati to go to Railway Kodur. There is no mention in Ex.A.1 – F.I.R. that the deceased was travelling in the auto along with his goods i.e., vegetables. For one reason or other, the claimants have not filed the charge sheet to substantiate that by the time of accident the deceased was travelling in the auto along with his goods. The possibility of taking the plea that the deceased was travelling along with the goods cannot be ruled out completely. If really the deceased was travelling in the auto along with his goods, respondent No.1 might have stated the same at the earliest point of time i.e., in F.I.R. For the reasons best known, respondent No.1 did not choose to file the counter. Respondent No.1 was examined as PW.2. In the chief-examination, PW.2 deposed that by the time of accident, the deceased was travelling in the auto along with his goods. If really the version put forth by PW.2 (respondent No.1) is true and correct, he might have filed the counter disclosing this fact at the earliest point of time. If ultimately the insurance company proves that the first respondent had violated the terms and conditions of the insurance policy then he has to pay compensation to the petitioners. In order to avoid his liability, the possibility of distortion of facts by the first respondent, in collusion with the petitioners, cannot be ruled out completely. On coming to know the legal consequences, the possibility of taking this stand by the first respondent is more probable and believable. It appears that P.W.2 deposed as if the deceased was travelling in the auto along with vegetables, with the object of mulcting the responsibility on the

insurance company, which eventually relieves the burden of payment of compensation by him to the petitioners. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the petitioners that by the time of accident, the deceased was travelling in the auto along with his goods.

17. The oral testimony of RW.1 coupled with Ex.B.1 reveals that the auto was insured with respondent No.2 – Insurance Company under Ex.B.1 – Policy. Learned counsel for respondent No.1 submitted that the seating capacity of the auto is two in number. Admittedly, the driver of the auto died and his legal representatives have filed the petition claiming compensation. As per Ex.B.2 – Photostat copy of R.C. Book, the auto involved in the accident was a goods carriage vehicle and at Serial No.19, the seating capacity is shown as two in number. Admittedly, by the time of accident, the deceased along with the driver and first respondent was travelling in the auto. Merely because the seating capacity is two in number by itself is not a valid ground to fasten the liability on the Insurance Company without paying proper premium. A perusal of Ex.B.1 reveals that respondent No.1 paid an amount of Rs.100/- covering the risk of owner (respondent No.1) and driver of the vehicle. Respondent No.1 did not pay the premium covering the risk of Non Fare Paid Passengers (NFPPs). If the owner of the vehicle pays premium under NFPPs, the insurer has to indemnify the liability of insured in case of death or bodily injury to owner of the goods or authorised representative of owner of goods. Even assuming, but not conceding, that the deceased was travelling in the auto along with his goods, there is no statutory or contractual obligation on the part of the Insurance Company to indemnify the liability of respondent No.1 in view of terms and conditions of insurance policy.

18. Having regard to the facts and circumstances of the case,

I am of the considered view that by the time of accident, the deceased was travelling as an unauthorised passenger in the auto.
I am fully agreeing with the finding recorded by the Tribunal that by the time of accident, the deceased was travelling in the auto as an unauthorised passenger.

19. Learned counsel for the petitioners submitted that a direction may be given to respondent No.2 to satisfy the award and recover the same from respondent No.1. As per the principle enunciated in **New India Assurance Co. Ltd., v Satpal Singh**[2], the insurer has to indemnify the liability of the insured notwithstanding the violation of the terms and conditions of the policy by the insured even in case of death or injuries of unauthorised/gratuitous passenger or owner of the goods. In **New India Assurance Co. Ltd., v Asha Rani**[3], obliterating the principle in **Satpal Singh** case, it was held in paras 28 to 30 as under:

> **28.** An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. But if the ratio of this Court's decision in *New India Assurance Co. v Satpal Singh*, (2000) 1 SCC 237, is taken to its logical conclusion, although for such passengers, the owner of a goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefor even no premium is required to be paid.
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> **29.** We may consider the matter from another angle. Section 149(2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. It terms of clause (i) of sub-section (2) of Section 149 of the Act one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defence available to the insurer would be obliterated in view of the decision of this Court in *Satpal Singh* case.
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> **30.** For the foregoing reasons, I am in respectful agreement with My Lord, the Chief Justice of India that the decision of this Court in *New India Assurance Co. v Satpal Singh* has not laid down the law correct and should be overruled.

As per the principle enunciated in **Asha Rani** case, there is no statutory or contractual obligation on the part of the insurer to indemnify the liability of the insured in case of violation of terms and conditions of policy including death or bodily injury to unauthorised passengers.

20. In **National Insurance Co. Ltd., v Baljit Kaur**[4] the Hon'ble apex Court, at para No.21, held as follows:

> 21. 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 decision of this Court in *New India Assurance Co. Ltd., v Satpal Singh*[5]. The said decision has been overruled only in *New India Assurance Co. Ltd., v Asha Rani*[6]. We, therefore, are of the opinion that the interest of justice will be subserved 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.

As per the principle enunciated in **Baljit Kaur** case, the insurer has to pay the compensation to the claimants and recover the same from the insured only in cases where the Tribunals or High Courts fastened the liability on the insurer basing on the judgment of **Satpal Singh** case. The decision rendered in **Asha Rani** case operates with prospective effect.

21. There is no statutory or contractual obligation on the part of the insurer to indemnify the liability of insurer in case of death or bodily injury of unauthorised or gratuitous passengers in view of the principle enunciated in **Oriental Insurance Co. Ltd. v Devireddy Kondareddy**[7], **Manager, National Insurance Co. Ltd., v Saju P. Paul**[8], **M.V. Jayadevappa v Oriental Fire & Insurance Co. Ltd.,**[9] and **National Insurance Co. Ltd., v Bommithi Subbhayamma**[10].

22. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that it is not a fit case to order pay and recovery.

23. In the result, the Appeal is allowed in part by enhancing the quantum of compensation from Rs.1,50,000/- to Rs.2,38,400,/- with interest at the rate of 7.5% per annum on the enhanced amount of compensation from the date of petition till the date of realisation and the petition against respondent No.2 – Insurance company is dismissed. The respondent No.1 – owner of the auto alone is liable to pay the entire compensation to the petitioners. There shall be no order as to costs.

24. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 17.03.2015
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[1]. 2009 ACJ 1298

[2] (2000) 1 SCC 237

[3] (2003) 2 SCC 223

[4] (2004) 2 SCC 1

[5] (2000) 1 SCC 237

[6] (2003) 2 SCC 223

[7] (2003) 2 SCC 339

[8] (2013) 2 SCC 41

[9] (2004) 13 SCC 43

[10] (2015) 12 SCC 243