HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.504 OF 2006

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JUDGMENT:

The instant appeal is preferred by the respondent - M/s Oriental Insurance Company Limited, aggrieved by the order and decree, dated 01-12-2003, in O.P. No.425 of 1998, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – Additional District Judge, Anantapur (for short 'the Tribunal'), whereby and where-under a sum of Rs.75,296/- was awarded as compensation as against the claim of Rs.1,50,000/- laid under Sections 140 and 166 of Motor Vehicles Act, 1988 (for short 'the Act') for the death of one Syed Ibrahim.

2. The appellant herein is the sole respondent in the O.P. before the Tribunal, while respondent Nos.1 to 5, who are wife and children of the deceased – Syed Ibrahim, are petitioners.

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

4. The facts, in brief, are that on 17-10-1997 at about 7.00 P.M., deceased – Syed Ibrahim started with 407 Van bearing registration No.AP 02/V 2618 with a load of sunflower seed from Guttur village to Bellary along with his son Rizwan, cleaner of the Van, Ilias Baig, and one M. Nagaraja Rao, being the driver, and when the van was proceeding on Nuthimadugu –Kalyandurg road about 2 KMs. ahead of Bathuvanipalli village, rear right wheel tyre was burst, on account of which, the van turned back and fell towards left side on southern side of the road, resulting in left front wheel running over Syed Ibrahim, whose death occurred instantly. The concerned police also registered a crime against the driver of the van. The petitioners, therefore, claimed a sum of Rs.1,50,000/- as compensation from the sole respondent – Insurance Company.

5. The respondent – Insurance Company filed written statement, of course, in the claim petition, contending that the deceased can not be construed as a third party, since he is owner of the crime vehicle and, therefore, the petitioners are not entitled to claim compensation. It is also stated that due to negligence of the owner - deceased, the accident has occurred as can be gathered from the version of petitioners, therefore, sought to dismiss the claim.

6. Based on the pleadings, the Tribunal framed the following three issues about fixing responsibility for the accident.

> "1. Whether the accident occurred on 17-10-97 due to rash and negligent driving of the Van bearing No.AP-02/V.2618 by its driver the deceased fell down and the left front wheel run over the deceased causing his death?
>
> 2. Whether the petitioners are entitled to compensation? If so, to what amount?
>
> 3. To what relief ? "

7 . During inquiry before the Tribunal, the 1st petitioner besides examining herself as PW.1, has examined the cleaner of crime vehicle, Ilias Beig, an eye-witness to the occurrence and marked Exs.A-1 to A-4. On behalf of the sole respondent, Ex.B-1, insurance policy, was marked on consent.

8. The Tribunal on issue No.1 having appreciated the evidence on record, held it in favour of the petitioners, but, however, observed that the claim was adjudicated upon under section 163-A of the Act and, thus, answered it. On issue No.2, placing reliance on the decision of this Court in **New India Assurance Company Ltd., v. Nagalla Laxmi and another**, held that the legal representatives of owner can also claim compensation on account of death of the owner travelling in his own vehicle along with his goods as owner of goods. On issue No.3, taking the age of deceased as 50 years and the income at Rs.900/- per month, deducting 1/3rd there-from, arrived the contribution at Rs.600/- per month or Rs.7,200/- per annum, applied multiplier '7.68' and

arrived at Rs.55,296/- towards loss of dependency, besides granting Rs.10,000/- towards loss of consortium and Rs.10,000/- towards loss of estate and, thus, determined the compensation at Rs.75,296/- and apportioned the same among the petitioners.

9. It is the aforesaid order which is under challenge in the instant appeal by the respondent – Insurance Company contending in the grounds of appeal that the deceased being owner of the insured van and was travelling in it when it met with accident. The Tribunal was not right in ordering Insurance Company to pay the amount as if policy covers risk of owner also travelling in his own vehicle. It is also stated that as per the authoritative pronouncements of the Hon'ble Supreme Court, owner of vehicle travelling in the said vehicle is not covered by policy, but the Tribunal deviated the same by referring to some stray decisions in support of its view, did not lay down the correct law and, therefore, sought to set aside the order under challenge in the instant appeal.

10. Heard Sri Narsi Reddy Teegala, learned counsel for the appellant. Despite service of notices on respondents, none appears for them.

11. Perused the order and the evidence, both, oral and documentary let in by the petitioners.

12. Instead of repeating what was mentioned in the above, touching how the Tribunal has arrived at the conclusion in ordering the appellant to pay compensation, it would be appropriate to extract the relevant portion in the order contained in paragraph Nos. '9' and '10' thus:

> "9. ……… The learned counsel for the 2nd respondent did not cite any authorities in this regard, but it is a fact that Old M.V. Act and New M.V. Act are intended only in case of third parties, whether the owner travelling in his own vehicle in the capacity of owner of goods can be considered as third party or not is considered in the decision reported in 1997(2) (AP) Law Summary it was held that the owner of the vehicle has to be considered as a third party that he was travelling in his own vehicle but in a different capacity as owner of goods. The learned counsel for the petitioners also cited a decision

reported in 2003(2) Andhra Weekly Reported in the case of New India Assurance Company Ltd., Vs. Nagulla Laxmi and another wherein it was held that:-

> "M.V. Act, 1988 Sec.17:- …. Vehicle driver by the owner himself met with the accident-Driver-Owner died – Insurance Policy covers driver – When owner is driver covered by the Policy – Owner gets substituted as driver – Words "any person" in Sec.95(1)(b) has to be interpreted to include the owner whether travelling or driving – Amount of compensation granted as assessed by the Tribunal with 9% interest instead of 12% - Appeal by Insurance Company dismissed."

10. In view of the above decision, it is obvious that the legal representatives of the owner is also entitled to claim compensation on account of the death of the owner travelled in his own vehicle along with his goods as owner of goods. Therefore, I hold that the insurance company is liable to pay compensation."

13. A perusal of policy under Ex.B-1 would disclose that the risk of owner is not covered. The relevant portion runs thus:

SCHEDULE OF PREMIUM

A) OWN DAMAGE –BASIC	745-00	B) LIABILITY TO PUBLIC – BASIC	1,245.00
ADD: OWN DAMAGE – SURCHARGE	4,800-00	Add: Legal Liability for Non Fare Paying Employees No.1	50.00
LESS: EarthQuakes	- 320-00	Paid Drivers/Workmen No.2	30.00
NOB/MALUS:Bonus/ Malus	- 783-	Workmen>6 No.5ADD:TPPD	75.00 75.00
Percent - 15%Bonus/ Malus AmtLESS:ADD: Loading OD Premium	75 Rs. 0.00	Cover For Unlimited AmountADD: Loading Act Premium	Rs. 0.00
Total of (A)	Rs.4,441.25	Net Premium (RS.)	Rs.5,620.00
		Service Tax 5%	Rs. 281.00
		Total Premium(RS.)	Rs.5,901.00

Thus, it is clear that the legal liability for non-fare paying employees No.1; and paid drivers/workmen No.2, premium was paid and, therefore, there is no reference as to owner at all except to the extent that owner is entitled to own damage – basic add own damage - surcharge, as he paid premium.

14. The learned counsel for the appellant in support of his submission that

owner can not be construed as a third party, placed reliance on a decision of this Court in **S. Chenchulakshmi and another v. New India Assurance Company Limited, Tirupathi**, for the proposition that deceased being owner of the insured vehicle, he can not be construed as a third party and that insurance policy does not cover personal injury, held in paragraph No. '5' thus:

> "5. In this case, deceased Sekhar was owner of insured motorcycle and, therefore, he cannot be considered as third party and insurance company does not cover personal injury to insured. Appellants therefore are not entitled to claim compensation. There are no reasons to interfere with impugned award."

15. Since for the reasons firstly, that risk of the owner is not covered as no premium at all was paid as reflected in Ex.B-1 and, second, in view of the decision of this Court in
S. Chanchulakshmi's Case (Supra 2), the order under challenge is liable to be set aside.

16. It is represented by the learned counsel for the appellant that while granting interim stay, this Court directed to deposit half of the decretal amount and the said amount is lying to the credit of the OP and if the same is not withdrawn, to order that the Insurance Company is at liberty to withdraw the said amount. The said request is acceded to.

17. Accordingly, the appeal is allowed, setting aside the order and decree, dated 01-12-2003, in O.P. No.425 of 1998, passed by the Tribunal so far as the appellant is concerned by maintaining the order and decree in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

March 31, 2015.

Mgr