

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

+ MACMA No. 988 of 2005

-

% Dated 30.03.2015

-

**# The Oriental Insurance Company Ltd., rep. by its
Branch Manager, Kadapa.**

...Appellant

Vs.

\$ Gora Venkatramana Reddy and another

...Respondents

! Counsel for the Appellant: Ms. I. Maamu Vani

^ Counsel for Respondent No.1: Sri D. Kodanda Ramireddy

Counsel for Respondent No.2: ----

< Gist :

> Head Note:

? Cases Referred:

1. 2004(2) ALT 33(SC) = (2004) 2 SCC 1
2. 2004 ACJ 1
3. (2000) 1 SCC 237
4. (2003) 2 SCC 223
5. (2008) 7 SCC 425
6. (2013) 2 SCC 41
7. 2014 (3) ALD 601
8. (2003) 2 SCC 339
9. (2007) 6 SCC 657
10. (2007) 7 SCC 56
11. (2009) 8 SCC 785

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 988 of 2005

Judgment:

The instant appeal is preferred by the Oriental Insurance Company Limited, which was arrayed as the second respondent in OP No.205 of 1997 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Madanapalle, aggrieved of the order, dated 28.12.2004, whereby and whereunder a sum of Rs.55,000/- was granted as compensation for the injuries sustained by the petitioner with interest at 9% p.a., on the ground that the petitioner was travelling in a goods vehicle as an unauthorized passenger, requesting to set aside the award and decree passed by the Tribunal.

2. For the sake of convenience, the parties hereinafter referred to as arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that on 28.06.1997 at about 8.00 AM, while the petitioner was travelling with his tomato baskets in a lorry bearing registration No.AP-04T-3915, owned by the first respondent and insured with the second respondent, the driver had driven it in a rash and negligent manner at high speed, due to which, the lorry turned upside down on Piler – Kadapa road near Thimmapuram cross roads, causing injuries to the petitioner. He was immediately shifted to Government Hospital, Piler and from there to SVRR Government General Hospital, Tirupati, where he took treatment as inpatient for 21 days incurring huge expenditure and even the Station House Officer, K.V. Palle Police Station, registered a case in Crime No.73 of 1997 under Section 338 IPC, against the driver of the offending lorry. Therefore, he sought Rs.1,00,000/- as compensation, under Section 166 of the Motor Vehicles Act 1988 (for short 'the Act'), with 12% p.a.,

interest thereon.

4. The first respondent remained *ex parte*. The second respondent - Insurance Company filed its written statement opposing the claim. It has taken a specific plea that the petitioner was a gratuitous passenger and, therefore, the Insurance Company is not liable to pay any compensation as the first respondent – owner of the lorry violated the terms of the policy in allowing the gratuitous passenger to travel in the said lorry. While reserving its right to seek the defences available under Sections 149 and 170 of the Act, finally requested to dismiss the claim.

5. The Tribunal framed the following three issues about the responsibility for the accident.

- “1. Whether the petitioner sustained injuries in a motor accident to the lorry bearing No.AP-04-T-3915 on 28.06.1997 at about 8.00 AM near Thimmapuram cross on Piler – Cuddapah road due to rash and negligent driving of the driver?
2. Whether the petitioner is entitled for compensation and if so from whom and to what quantum?
3. To what relief.”

6. In order to entitle himself for the compensation, the petitioner, besides examining himself as PW.1, has examined one Raja Naik as PW.2 and Dr. M. Sanjeeva Rayudu as PW.3 and marked Exs.A1 to A4. On behalf of the second respondent – Insurance Company, one Vara Kumar was examined as RW.1 and marked the copy of insurance policy as Ex.B1.

7. The Tribunal, having deliberated on issue No.1, in the light of the evidence let in by the petitioner, held it in favour of the petitioner.

8. On issue No.2, basing on the evidence of PWs.1 and 3, so far as determination of compensation is concerned, and relying on Ex.A2 –

certified copy of wound certificate, but however, on the ground that Ex.A4 – disability certificate was not issued by the competent authority and it was only issued by PW.3, excluded it in accepting the permanent disability set up by the petitioner and granted a sum of Rs.12,500/- for grievous injury, Rs.6,000/- for six simple injuries, Rs.6,500/- towards medical expenses, Rs.20,000/- towards permanent disability and Rs.10,000/- for pain and suffering, thus, making a total amount of Rs.55,000/- as compensation with interest at 9% p.a.

9. Concerning the liability of the Insurance Company, the Tribunal, while referring to Ex.B1 – copy of insurance policy, which shows that the first respondent – owner of the vehicle was not supposed to allow any passengers to travel in the lorry either as gratuitous passengers or fare paid passengers and that the same would amount to clear violation of the terms of the insurance policy, but placing reliance on the decisions of Hon'ble Apex Court in **National Insurance Company Limited v. Baljit Kaur**^[1], and in **National Insurance Company Limited v. Swaran Singh**^[2], observing that it was the liability of the Insurance Company to satisfy the award in favour of the third party at the first instance and then to recover the awarded amount from the owner or driver of the vehicle even where the Insurance Company could establish the breach of terms of policy on the part of the owner of the offending vehicle, directed the second respondent – Insurance Company to deposit the decretal amount into Court within two months from the date of award with liberty to recover the same from the first respondent by filing execution petition.

10. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal, somehow, sidelined the fact that the decision rendered in **New India Assurance Company Limited v. Satpal Singh**^[3], was set aside by the decision rendered in **New India Assurance Company Limited v.**

Asha Rani^[4], and that, therefore, after the decision rendered in **Asha Rani's** case

(4 supra) i.e., after 03.12.2002, the Insurance Company was not liable to pay compensation for the loss in respect of injuries or death of passengers travelling in a goods vehicle.

11. It is also stated that the Tribunal ought to have seen that the direction to the Insurance Companies to satisfy the award in favour of the claimants wherever the Courts had proceeded in terms of **Satpal Singh's** case (3 supra) would clearly indicate that such a direction could be granted only if the liability was fastened on the insurance company basing upon the decision rendered in **Satpal Singh's** case (3 supra).

12. It is also stated that the Tribunal, somehow, failed to see that the insurance policy was a contract of indemnity and premium would be collected according to the risk that is covered and the risk of injury to or death of passengers being carried in a goods vehicle is neither required to be covered under the Act nor covered under the policy and, therefore, the question of the Insurance Company being made liable for a risk which was not covered by the policy would not arise.

13. It is also stated that the Tribunal, somehow, over looked the fact that the principle of paying the third party and recovering from the owner of the vehicle as in the case of violation of policy conditions could not be made applicable to a case where the risk was not covered by the policy.

14. It is also stated in the grounds that the Tribunal, somehow, overlooked the fact that the principle laid down by the Hon'ble Apex Court that the gratuitous passengers were not covered by the policy had to be applied at least to the orders being passed by the Tribunals in cases where the orders were passed after 31.12.2004.

15. It is further stated that the amount of Rs.55,000/- granted as compensation was excessive, that the Tribunal was not right in granting Rs.12,500/- for one grievous injury, Rs.6,000/- towards simple injuries and again granting Rs.10,000/- towards pain and suffering along with Rs.20,000/- for permanent disability and sought to set aside the award and decree passed by the Tribunal.

16. Heard Ms. I. Maamu Vani, learned Standing Counsel for the appellant – Insurance Company, and Sri D. Kodandarami Reddy, learned counsel for the first respondent. Despite service of notice on the second respondent none appears for him.

17. Admittedly, the first respondent has not preferred any appeal challenging the direction directing the Insurance Company initially to deposit the decretal amount and then to recover the same from him. Only the Insurance Company has preferred the appeal attacking the said direction in the instant appeal.

18. So far as factual aspect is concerned, there is no dispute between the parties, in which case, the finding recorded by the Tribunal that the petitioner was travelling either as a gratuitous passenger or fare paid passenger in the said lorry, which was a goods carriage, stands undisturbed. Hence, the only short question that arises for consideration in the instant appeal is:

“Whether the direction given by the Tribunal to the Insurance Company to deposit the decretal amount initially and then to recover the same from the first respondent by filing execution petition can be sustained?”

19. In this direction, learned counsel for the appellant, while contending that subsequent to **Baljit Kaur’s** case (1 supra) the question of issuing such a direction does not arise, and that, that has been the law laid down by the Hon’ble Apex Court placed reliance on

the decisions in **Baljit Kaur's** case (1 supra) and in **United India Insurance Company Limited v. Serj Rao and others**^[5].

20. On the other hand, learned counsel for the first respondent – claimant placed reliance on the decisions in **Manager, National Insurance Company Limited v. Saju P. Paul**^[6], and in **Oriental Insurance Company Limited, Hyderabad v. Tadi Lova Raju and another**^[7].

21. Adverting to the decisions, on which the learned counsel for the Insurance Company placed reliance, in **Baljit Kaur's** case (1 supra) the learned counsel placed reliance on the law laid down by the Hon'ble Apex Court in paragraph '21'. The fact situation therein would reflect that the deceased was returning from a marriage ceremony and died as a result of the driving of the driver of the goods vehicle which was a Truck belonging to the second respondent therein on 19.02.1999. The Claims Tribunal therein basing on the decision of the Hon'ble Apex Court in **Satpal Singh's** case (3 supra) accepted the claim petition and granted Rs.1,32,000/- as compensation with interest at 9% p.a., from the date of application rejecting the stand of the Insurance Company. The said verdict was upheld by the High Court. The Hon'ble Apex Court, referring to the decisions in **Satpal Singh's** case (3 supra), in **Asha Rani's** case (4 supra) and the case of **Oriental Insurance Company Limited v. Devireddy Konda Reddy**^[8], and explaining the words "including owner of the goods or his authorized representative carried in the vehicle" occurring in Section 147 of the Act also while explaining the effect of 1994 amendment, clarified the legal position holding that it shall have prospective effect, 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 *Satpal Singh* (supra). The said decision has been overruled only in *Asha Rani* (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.”

22. Thus, it is clear that subsequent to the decision rendered by the Hon'ble Apex Court in **Asha Rani's** case (4 supra), no direction can be given to the Insurance Company initially to satisfy the decree and then to realise the amount from the owner of the vehicle.

23. In **Serjerao's** case (5 supra), while referring to the factual aspect therein where labourers were travelling in trolleys and referring to the earlier decisions in **Yallwwa v. National Insurance Company Limited**^[9], and in **Oriental insurance Company Limited v. Brij Mohan**^[10], held in paragraph '6' thus:

“6. So far as the question of liability regarding labourers travelling in trolleys is concerned, the matter was considered by this Court in *Oriental Insurance Co.Ltd. v. Brij Mohan* and it was held that the Insurance Company has no liability. In view of the aforesaid two decisions of this Court, we set aside the

impugned order in each case and remit the matters to the High Court to consider the matters afresh in the light of what has been stated by this Court in Yallwwa case and Brij Mohan case.”

24. Thus, basing on the above decisions, it is the submission of the learned counsel for the appellant – Insurance Company that the direction given by the Tribunal is unsustainable.

25. Turning to the decisions, on which the learned counsel for the first respondent – claimant placed reliance, in **Saju P. Paul’s** case (6 supra), in connection with the second driver travelling in the vehicle therein, since his risk was not covered by the policy as it covers only the risk of one driver and a cleaner, treating him as a gratuitous passenger, held that the insurer was not liable to pay compensation towards the second driver respondent therein, since he could be only classified or categorised as a gratuitous passenger, but, in view of the peculiar facts occurring therein that the claim was being pending since two decades and as insurer had deposited entire award amount, the claimant was permitted to withdraw the said amount with interest with liberty to insurer to recover the same from the owner of the vehicle. The Hon’ble Apex Court was explaining the words “Gratuitous passenger” and “Acting in course of employment” in the said decision. The Hon’ble Apex Court, while pointing out two questions, that have been referred to the larger Bench for consideration in **National Insurance Company Limited v. Parvathneni**^[11], held in paragraphs ‘25’ and ‘26’ thus:

“25. In National Insurance Company Ltd. v. Parvathneni (11 supra), the following two questions have been referred to the larger Bench for consideration (SCC p.788, para 7):

“7.....’(1) If an Insurance Company can prove that it does not have any liability to pay any amount in law to the claimants under the Motor Vehicles Act or any other enactment, can the Court yet compel it to pay the amount in question giving it liberty to later on recover the same from the owner of the vehicle?

(2) Can such a direction be given under Article 142 of the Constitution, and what is the scope of Article 142? Does Article 142 permit the Court to create a liability where there is none?’ ”

26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in *Baljit Kaur* (1 supra) and *Challa Upendra Rao* ((2004) 8 SCC 517) should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, claimant was 28 years’ old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The insurance company has already deposited the entire awarded amount pursuant to the order of this Court passed on 01.08.2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent No. 1) may be allowed to withdraw the amount deposited by the insurance company before this Court along-with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent No. 2 herein). The recovery of the amount by the insurance company from the owner shall be made by following the procedure as laid down by this Court in *Challa Upendra Rao*.”

26. Thus, the Hon’ble Apex Court, taking into consideration the peculiar facts of the case, given such a direction exercising the power under Article 142 of the Constitution of India.

27. The next decision, relied on by the learned counsel for the first respondent in **Tadi Lova Raju’s** case (7 supra), was rendered by me. It is no doubt true, it was ordered that the Insurance Company to pay the awarded amount to the first respondent and then recover the same from the owner of the vehicle by initiating execution proceedings without filing a separate suit for the said purpose, placing reliance on the decisions referred to in paragraphs ‘14’ and ‘15’ therein but,

somehow, the legal principle laid down by the Hon'ble Apex Court in **Baljit Kaur's** case (1 supra) while clarifying that the decision rendered in **Asha Rani's** case (4 supra) is prospective in effect could not be brought to the attention of this Court. Therefore, certainly, this Court is not deterred in differing from the decision in **Tadi Lova Raju's** case (7 supra), when the true position of the law laid down by the Hon'ble Apex Court in **Baljit Kaur's** case (1 supra) in paragraph '21' and approved by the Hon'ble Apex Court in **Serjerao's** case (5 supra) could not be properly appreciated. Therefore, there is no merit in the submissions made by the learned counsel for the first respondent – claimant and the consequence being the appeal is to be allowed setting aside the direction that the appellant to initially deposit the entire amount and then to recover the same from the owner of the lorry given by the Tribunal.

28. Accordingly, the appeal is allowed. There shall be no order as to costs.

29. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 30.03.2015

Nsr

[1] 2004(2) ALT 33(SC) = (2004) 2 SCC 1

[2] 2004 ACJ 1

[3] (2000) 1 SCC 237

[4] (2003) 2 SCC 223

[5] (2008) 7 SCC 425

[6] (2013) 2 SCC 41

[7] 2014 (3) ALD 601

[8] (2003) 2 SCC 339

[9] (2007) 6 SCC 657

[\[10\]](#) (2007) 7 SCC 56

[\[11\]](#) (2009) 8 SCC 785