HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1106 OF 2005

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JUDGMENT:

The petitioners in O.P. No.74 of 2000, on the file of the Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Adilabad (for short 'the Tribunal') are appellants. Aggrieved by the order and decree, dated 20-12-2004, in the said O.P., whereby and where-under, the Tribunal granted a sum of Rs.2,02,000/-(Rupees two lakhs and two thousand) as against the claim of Rs.2,50,000/-(Rupees two lakhs and fifty thousand) laid under Section 166 (1) (c) of the Motor Vehicles Act, 1988 (for short 'the Act'), fastened liability on respondent Nos.1 and 2, who were driver and owner of lorry bearing registration No.MH 26 8184, while dismissing the claim petition against the 3rd respondent – Manager, M/s National Insurance Company Limited, the instant appeal is preferred.

2. The appellants herein are petitioners in the O.P. before the Tribunal, while respondent Nos.1 to 3, who are driver, owner and insurer of lorry bearing registration No.MH 26 8184 respectively, are respondent Nos.1 to 3, respectively.

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

4. The fact-situation occurring in the instant case is, that on 18-06-1999, one Sakarval Madhav Singh boarded the lorry bearing registration No.MH 26 8184 at Sonala village along with one quintal of wheat to go to Echoda for selling the wheat and, due to heavy rains, Kadam river was flooding and vehicles were stationed on both sides of the river as they were unable to cross the river. But, the driver of the lorry belonging to the 1st respondent without taking any pre-cautions drove it in a rash and negligent manner and while it was crossing the

bridge, due to his negligence, it turned upside down and fell into the river, as a result thereof, the said Sakarval Madhav Singh washed away in floods. The petitioners, who are dependants on him, stating that the deceased was an agriculturist by profession; earning Rs.2,000/- per month and he was the only earning member in their family and due to his sudden demise, they lost their only source of income; sought a sum of Rs.2,50,000/- as compensation.

5. Respondent Nos.1 and 2, who are driver and owner of the lorry, have not chosen to file any counters, thus, they did not oppose the claim.

6. Respondent No.3 – Insurance Company opposed the claim. It took a specific plea that the deceased was travelling as an unauthorized passenger in a goods vehicle and, therefore, it is not liable to pay any compensation to the petitioners. Yet another plea taken by it is, that the driver of the lorry driven it into flooded river bridge without taking proper caution, however, due to force of water, the lorry turned upside down and, therefore, the accident has occurred, but not due to driving the lorry into flooded water and, therefore, it cannot be made liable to pay compensation.

i) It has also filed I.A. No.523 of 2002 under Section 170 of the Act and obtained permission, by orders, dated 04-04-2003, to raise all defences available to the owner in case owner does not intend to contest the claim.

7. Based on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During inquiry before the Tribunal, the 1st petitioner, besides examining herself as PW.1, has examined one Mr. Tulsiram, an eye-witness to the occurrence, as PW.2 and marked Exs.A-1 to A-4. On behalf of the

3rd respondent – Insurance Company, Assistant Administrative Officer, Sri T. Raja Rao, was examined as RW.1 and marked Exs.B-1 and B-2, which are copy of policy with conditions and certified copy of first information report in Crime No.21 of 1999 of Bazarhathnoor police station.

8 . The Tribunal basing on the evidence of PW.2, an eye witness to the occurrence supported by Exs.A-1 and A-2, held issue No.1 in favour of the petitioners, observing that the driver of lorry negligently drove the vehicle, despite the fact that Kadam river bridge was overflowing with floods. On issue No.2, the Tribunal basing on Ex.B-1, copy of policy, observing that it does not cover risk due to floods and inundation, held that only the 1st and 2nd respondents, who are driver and owner of the lorry, are responsible, but not the 3rd respondent. As seen from the order, even the learned counsel for the petitioners placed reliance on a decision of the Hon'ble Supreme Court in **New India Insurance Company v. Satpal Singh and others**, despite the fact that the order under challenge was rendered on 20-12-2004, by which date, the decisions in **New India Assurance Co. Ltd. v. Asha Rani** and **National Insurance Company Limited v. Baljit Kaur and others** were rendered by the Hon'ble Supreme Court holding that unauthorized passengers or gratuitous passengers travelling in a goods vehicle are not entitled to compensation from the Insurance Company. The Tribunal determined the compensation taking the income of the deceased at Rs.1,500/- per month or Rs.18,000/- per annum and having deducted 1/3rd there-from, applied multiplier '16', taking the age of deceased as 35 years, and arrived at Rs.1,92,000/- towards loss of dependency. Towards non-pecuniary damages, a sum of Rs.10,000/- was granted under all other heads and, thus, a total sum of Rs.2,02,000/- was granted as compensation with interest at 9% per annum thereon against respondent Nos.1 and 2 and dismissed the claim against respondent No.3.

9. It is the aforesaid order which is under challenge in the instant appeal preferred by the appellants – petitioners, contending in the grounds of appeal that the Tribunal, somehow, overlooked the policy under Ex.B-1, and that the Tribunal ought to have fastened liability on respondent No.3, and that the Tribunal granted a meager compensation and, therefore, sought to grant balance amount by fastening liability on the 3rd respondent.

10. Heard Sri S. Chandra Shekhar, learned counsel for the appellants – petitioners. Despite service of notice on respondent Nos.1 and 3, none appears for them. The instant appeal was dismissed against respondent No.2, owner of lorry, by order, dated 04-01-2012. The 2nd respondent, owner of the lorry, did not contest the claim petition before the Tribunal and, therefore, the dismissal against respondent No.2 is of no consequence in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**.

11. Perused the order under challenge and the evidence on record let in by the petitioners.

12. Now, the following points arise for consideration:

I. Whether the appellants are entitled to enhancement of compensation?

II. Whether the order under challenge can be sustained in so far as respondent No.3 is concerned and, whether liability can be fastened on the 3rd respondent – Insurance Company?

POINT (II)

13. Learned counsel for the appellants while contending that the Tribunal went wrong in dismissing the claim petition against the 3rd respondent – Insurance Company, placed reliance on
a decision of the High Court of Madhya Pradesh at Jabalpur in **R.J. Foujda Bus Service v. Ganpat Singh and others.** As seen from the fact-situation therein, the vehicle involved was a bus indicating ‘passengers’ vehicle’. The driver took the bus on the bridge when water was overflowing and the bus was washed away resulting in death of several passengers. The Tribunal exonerated the Insurance Company on the ground that accident took place due to floods. On appeal, a Division Bench of Madhya Pradesh High Court held that the accident had taken place due to negligence of driver of the bus and insurance company

was liable to pay the compensation. Such is not the fact-situation occurring in the instant case, though, akin to a very limited extent, that the lorry was washed away in floods while it was being taken by the driver on the bridge, though, other vehicles' drivers did not dare to take their respective vehicles and parked on either side. In the instant case, the plea of Insurance Company has been that the deceased was travelling as an unauthorized passenger and, therefore, it is not liable to pay compensation. Thus, the said decision would not assist the petitioners to answer the aspect relating to gratuitous passenger.

i) The next decision relied on by the learned counsel for the petitioners is in **Branch Manager, United India Insurance Co. Ltd., Dabagardens, Visakhapatnam v. Dadisetti Ramanamma and others.** This Court directed the Insurance Company to first pay compensation to the claimants and recover from owner of the vehicle which was directed by the Tribunal holding it as not illegal nor perverse, nor in excess of jurisdiction, observing that in case the direction of Tribunal is up set, claim would be left in lurch. For the very same proposition, the learned counsel relied on yet another decision of this Court in **Reliance General Insurance Co.Ltd., Hyderabad v. Mohd. Saleem and another,** wherein while referring to **Baljith Kaur's Case** (Supra 3), held in paragraph Nos.9, 10 and 11 thus:

> "9. *In National Insurance Co. Ltd. v. Baljith Kaur and others*, 2004 (1) ALD 98 (SC) = (2004) 2 SCC 1, the Supreme Court did not lay down that the power to issue direction to the insurance company to satisfy the award in the first instance and then recover the same from the insurer was only with the Apex Court under Article 136 or 141 of the Constitution of India. In the said case, the Supreme Court laid down the law in general terms and held that by issuing such direction interest of justice will be sub-served and also emphasized that it has issued the aforesaid direction having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 and has laid down the legal position in categorical and clear terms that the Tribunal is not only entitled to determine the amount of compensation claimed as put-forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly and 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. In *Kusum Lata and others v. Satbir and others,* AIR 2011 SC 1234, the Supreme Court held that that the Tribunal has inherent power to issue such direction. Therefore, the argument advanced by the learned Counsel appearing for the insurance company goes contra to the ratio laid down in *Baljith Kaur's case (supra)* and the same cannot be sustained. The Tribunal by virtue of its power and jurisdiction under Section 168 of the Motor Vehicles Act can issue direction to the insurer to satisfy the award in the first instance in favour of the victims/third parties and then recover the amount so paid from the insured. In *National Assurance Company Limited v. Kamala and others (supra),* the Supreme Court held that the insurance company is liable to pay compensation to third parties, irrespective of the fact that there was any breach or violation of any policy conditions, but the insurance company can recover the amount from the insured the amount paid to third party, if there was any breach of conditions of the policy, but, in the first instance it has to pay the compensation to the claimant.

10. The scheme of the Motor Vehicles Act, 1988 as can be seen from the provisions of Sections 147 and 149 is that after notice to the insurer when the award has been passed, the position of the insurer is that of a judgment debtor and it has legal obligation to satisfy the award, despite the fact that it is entitled to avoid liability on the ground of breach of terms and conditions of the contract or the statutory provisions so long as there is a valid third party insurance. A distinction has to be drawn between the defences which the insurance company can take under Section 149 of the Motor vehicles Act and its obligation to satisfy the decrees and awards insofar as Victims/third parties are concerned. In MACMA Nos. 2535 of 2006 and 1661 of 2006,

a Division Bench of this Court to which I am

a party rendered a judgment applying the ratio laid down in *Baljith Kaur's case (supra)*, to the effect that even though the insurance company is not liable to pay compensation for violation of terms and conditions of the policy, it can be directed to satisfy the award in the first instance and then recover the same from the owner of the vehicle.

11. In the instant case also, by allowing the claimant to

> travel in a goods vehicle, the insured committed breach of terms of the policy, on account of which the insurance company cannot be held liable to pay compensation to the claimants. But, at the same time, the Tribunal is right in issuing a direction to the insurance company to satisfy the award in the first instance and thereafter recover the same from the owner of the vehicle. The said direction issued by the Tribunal is in accordance with law lay down by the Supreme Court in *Baljith Kaur's case (supra)*. The finding of the Tribunal is therefore upheld by not accepting the contentions urged on behalf of the insurance company."

ii) In the instant case, admittedly, the deceased boarded the goods vehicle at Sonala village stating that he carried one quintal of wheat and travelling to Echoda in order to sell the wheat. From a perusal of copy of charge sheet marked as Ex.A-1, it is clear that while lodging the report the complainant maintained silence as to his brother, Sakarval Madhan Singh carrying a bag of wheat for selling at Echoda. In case, he did really transport the wheat, the same would have found place in Ex.A-1 invariably. Even otherwise, the deceased can only be construed as a mid-way passenger, but not as owner of goods, who engaged the lorry in which he was travelling from his native place to a fixed destination. It is, thus, clear that the deceased can only be construed as an unauthorized passenger, but not as owner of goods travelling in a goods vehicle by engaging the entire vehicle for the said purpose. Even a perusal of Ex.B-2, makes it clear that the deceased boarded the lorry bearing registration No.MH 26 8184 coming from Maharashtra. As such, no other conclusion can be reached except in arriving at that the deceased boarded the lorry as a passenger without any goods, that too, as a mid-way passenger and, therefore, the finding recorded by the Tribunal that he was an unauthorized passenger can not be faulted with. Thus, order of the Tribunal dismissing the claim petition against Insurance Company does not warrant any interference and, therefore, the same is maintained.

POINT (I)

14. So far as enhancement of compensation is concerned, the Tribunal has arrived the earnings of deceased at Rs.1,500/- per month or Rs.18,000/- per annum and deducted 1/3rd there-from. However, in view of the decision of

Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another,** since the dependants are numbering (8), $1/5^{th}$ is permissible to be deducted towards personal expenses. When $1/5^{th}$, which works out to Rs.3,600/-, is deducted, the remainder i.e., Rs.14,400/- accounts for contribution to the family. Since the Tribunal has taken the age of deceased as 35 years, relevant multiplier is '16' and when the multiplicand 'Rs.14,400/-' is multiplied with '16', it works out to Rs.2,30,400/- towards loss of dependency. In addition there-to, the amount granted by the Tribunal at Rs.10,000/- is enhanced to Rs.19,600/- towards conventional sum. Thus, in all, the appellants are entitled to Rs.2,50,000/- as compensation. Concerning interest, the Tribunal granted it at 9% per annum, but the same is reduced to 7.5% per annum as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

15. In the result, appeal is allowed in part, and the order and decree, dated 20-12-2004, in O.P. No.74 of 2000, passed by the Tribunal are modified, enhancing the compensation to Rs.2,50,000/- (Rupees two lakhs and fifty thousand) from Rs.2,02,000/-(Rupees two lakhs and two thousand) with interest thereon at 7.5% per annum from the date of petition till realization, while maintaining the order and decree in all other respects. 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

March 30, 2015.

Mgr