HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1637 OF 2006

JUDGMENT:

This appeal is preferred by the United India Insurance Company Limited against the judgment and decree, dated 28-03-2006, whereby and whereunder, the Tribunal having recorded a finding that the deceased was travelling as an unatuhrosied passenger in the goods vehicle, while granting compensation of Rs.1,89,000/-, directed the appellant to initially deposit the amount and after such deposit to obtain a certificate from the office and to recover the amount later from the owner of the DCM Lorry bearing No.AP-9-T-6965, and, thus, the scope of the appeal is limited to that extent.

2. The appellant herein, United India Insurance Company Limited, is respondent No.2 in the O.P. before the Tribunal, while respondent Nos.1 to 3, who are wife and children of Bikkumalla Nageswar Rao @ Nagaiah (who died in the accident), are claimants (petitioners) and respondent No.4, who is owner of the DCM lorry bearing No.AP-9-T-6965 that involved in the accident and insured with the appellant, is respondent No.1.

3. For the sake of convenience, the parties herein are hereinafter referred to as arrayed in the O.P. before

the Tribunal.

4. The facts, in brief, are that on 04-06-2002, B. Nageswar Rao @ Nagaiah went to Anakapally to purchase jaggery and other kirana items at Rajahmundry for his business purpose in the wholesale market. On the way, he met one Venkata Chary, who was his friend at Rajahmundry, and both of them were waiting to engage a vehicle to carry the kirana items to his village. At that time, a DCM lorry bearing No.AP-9-T-6965 coming from Vizag side and proceeding towards Hyderabad, was stopped and the driver of the lorry,
K. Anjaneyulu, enquired them as to where they were going and when they replied that they were going towards Palvoncha, the driver asked them to board the lorry on payment of Rs.100/- to carry the goods, on which both of them boarded the lorry along with goods and sat in the cabin. At about 1-30 a.m., on the intervening night of 4/5-06-2002, when the DCM lorry crossed Koyyalagudem village, the DCM lorry driver drove it in a rash and negligent manner and at high speed and dashed against a Tipper bearing No.AP-37-U-2467, which was parked by the side of the road, due to which Nageswar Rao, who is hereinafter referred to as 'deceased', and cleaner of the van died instantly. The deceased was 32 years old, earning Rs.4,000/- per month and due to his sudden demise, the claimants were put to hardship, and,

therefore, they sought Rs.5,00,000/- towards compensation with costs and interest.

5. The 1st respondent, owner of the DCM lorry that involved in the accident, remained *ex parte* before the Tribunal.

6. The 2nd respondent, appellant herein, opposed the claim specifically pleading that the deceased was an unauthorised passenger travelling in the DCM lorry, as such, it is not liable to indemnify

the 1st respondent and not liable to pay the compensation to the claimants.

7. The Tribunal framed three issues in the direction of fixing responsibility for the accident. During enquiry before the Tribunal, the 1st respondent, wife of the deceased, examined herself as PW.1 and an eye-witness to the accident viz., Tipparapu Venkata Chary was examined as PW.2 and marked Exs.A-1 to A-5. On behalf of the respondents, A Suryanarayana, Manager of the local branch office of respondent No.2's company, was examined as RW.1 and marked a copy of the insurance policy of the DCM lorry that involved in the accident as Ex.B-1.

8. On appraisal of evidence, the Tribunal held issue No.1 in favour of the claimants. On issue No.2, by

elaborately discussing the evidence on record let in by the claimants and placing reliance on the judgments referred to in paragraph Nos.10, 11, 12, 13, 15, 18, 19 and 20, more particularly, the judgment rendered by the Hon'ble Supreme Court in **National Insurance Company Limited v. Baljit Kaur & others**[1]**,** while determining the compensation as Rs.1,89,000/- with interest at 7.5% per annum, directed the insurer of the DCM lorry to initially deposit the amount and then obtain a certificate from the office and recover the amount from the 1st respondent, owner of the DCM lorry.

9. Aggrieved of the above order, the instant appeal is preferred by the insurer as it was fastened with liability and placing reliance on the decision of this Court in **National Insurance Company Limited v. Bommiti Subbayamma and others**[2], contended that, in the cases, where the deceased was travelling in a goods vehicle, a direction to insurer to pay initially and recover the same thereafter, cannot be made, and, therefore, sought to set aside the judgment and decree so far as the liability fixed on it is concerned.

10. Heard Sri T. Mahender Rao, learned counsel for the

2nd respondent (appellant – insurer), and Sri M. Raja Malla Reddy, learned counsel for the claimants (respondent Nos.1 to 3).

11. Despite service of notice on respondent No.4, owner of the DCM lorry, none appeared on his behalf.

12. The limited question that arises for consideration is whether the direction or the order passed by the Tribunal directing the insurer to initially pay the compensation and thereafter to recover the same from the 1st respondent can be sustained, as the deceased was travelling in the DCM lorry, a goods vehicle, as unauthorised passenger at the relevant time?

13. Admittedly, the part of the order, which is under challenge herein, is not challenged by the claimants and in that view of the matter, the inference is, that the factual aspect, which was projected by the claimants is true, in which case, the invariable inference is that the deceased was travelling in the DCM lorry as an unauthorised passenger. This apart, *ex facie,* the facts would reveal that it is not the deceased, who engaged the lorry by himself alone for transport of his goods, but, in fact, the DCM lorry was destined to go to Hyderabad from Vizag and on the way, the deceased and PW.2 boarded the lorry. No doubt, incidentally they were carrying kirana goods as per the case projected by the claimants, but, certainly, the deceased cannot be construed as owner of the goods who engaged the DCM lorry to carry the goods

from one particular point to the destination. In that view of the matter, it has to be construed that the deceased was travelling in the DCM lorry at the relevant time as an unauthorised passenger, as rightly held by the Tribunal, in regard to which a definite finding was recorded. In such an event, the decision of the Hon'ble Supreme Court in **National Insurance Company's Case** (Supra 2), relied on by the learned counsel for the insurance company, mandates that no direction can be issued for initial payment and thereafter to recover the same from the owner of the vehicle involved in the accident.

14. In that view of the matter, the order of the Tribunal recorded on 28-03-2006, subsequent to the decisions rendered by the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani**[3] and **National Insurance Company Limited v. Baljit Kaur**[4]**,** directing the 2nd respondent (appellant - insurer) to deposit the amount awarded towards compensation initially and thereafter to recover the same from the 1st respondent, owner of the DCM lorry, is set aside, and, thus, the liability of the 2nd respondent (appellant) is totally exonerated. So far as liability of the 1st respondent is concerned, the compensation granted by the Tribunal is maintained to pay the compensation amount determined by the Tribunal and the interest thereon as ordered by the

Tribunal.

15. With the above directions, the appeal is allowed in part to the extent indicated above. There shall be no order as to costs.

16. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

February 10, 2015.

PV

---

[1] **(2004) ACC 259 (SC)**

[2] **2005 ACJ 721**

[3] (**2003) 2 SCC 223**

[4] **(2004) 2 SCC 1**