

HON'BLE SMT JUSTICE ANIS
M.A.C.M.A.No.1429 of 2005

J U D G M E N T:

This appeal is filed by the appellant/third respondent under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree dated 15.04.2005, passed by the Chairman, Motor Accident Claims Tribunal-cum-VI Additional District & Sessions Judge, (Fast Track Court), Narsapur, in M.V.O.P.No.621 of 2000, awarding compensation of Rs.1,74,000/-.

2. The respondent Nos.1 to 3/petitioners filed the above Original Petition under Section 166 of the Act claiming compensation of Rs.2,50,000/- on account of the death of one Kovvuri Yedukondalu (hereinafter referred to as 'the deceased') in a motor vehicle accident that occurred in the mid-night of 17/18.07.1999.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that the petitioners are the wife, daughter and mother of the deceased. The deceased and other persons engaged a lorry bearing No.MP.09D. 9040 on 15.07.1999 for transporting coconut plants from Yelamanchili to Indore and loaded 500 coconut plants in the vehicle. The lorry suffered break down on the way to Indore at the outskirts of Eluru town. After getting repaired, it started from Eluru and was proceeding to Suryapet, but in the mid night on 17/18.07.1999 the driver of the lorry drove the vehicle in a rash and negligent manner and applied sudden brakes, as a result the lorry turned turtle and fell on the road. The deceased and others sustained multiple injuries and shifted to Government Hospital, Suryapet. The deceased while undergoing treatment, died due to injuries. The deceased was hale and healthy, aged about 30 years and earning Rs.5,000/- per month by way of doing coconut plants selling business and maintaining his family.

Due to the death of the deceased, petitioners became destitute, as such prayed the Court to grant compensation of Rs.2,50,000/- against all the respondents being the driver, owner and insurer of the lorry.

5. Before the Tribunal, respondent Nos.1 & 2 remained *ex parte*.

6. The brief averments made in the written statement filed by the third respondent are as follows:

The third respondent put the petitioners to prove the manner of accident, age and income of the deceased and denied that the deceased was earning Rs.5,000/- p.m from coconut plant business and also put the petitioners to prove that the vehicle was got repaired at Eluru town and that the first respondent was having valid driving license at the time of accident and finally stated that the quantum of compensation claimed by the petitioners is high, excessive and exorbitant, and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate their claim, the petitioners got examined PWs.1 & 2 and got marked Exs.A.1 to A.5 on their behalf. On behalf of the contesting respondent, RW.1 was examined and Ex.B1 got marked.

8. After considering the direct evidence of eye witness-PW.2, Ex.A1 copy of the First Information Report, Ex.A3 motor vehicle inspector's report and Ex.A5 copy of the charge sheet, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.MP.09D.9040 and awarded compensation of Rs.1,74,000/- along with interest at 9% p.a. to the petitioners against all the respondents.

9. Being aggrieved by the award passed by the Tribunal, the third respondent preferred the present appeal.

10. The learned counsel appearing for the appellant/third respondent

argued that the deceased was travelling in the goods vehicle unauthorisedly and he was a gratuitous passenger at the time of accident; that the petitioners has not produced any evidence to show that the deceased was getting Rs.5,000/- p.m by doing business in coconut plants; and that there is no proof to show that the entire lorry was driven by the first respondent from Yelamanchili to Indore. It is also argued that the Tribunal ought not to have fixed the liability against the Insurance company in view of the judgment of the Hon'ble Apex Court in ***National Insurance Co. Ltd., v. Baljit Kaur and Ors.***^[1] wherein it is held at paras 20 & 21 as follows:

“20. It is therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

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 tact 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 (AIR 2000 SC 235). The said decision has been overruled only in Asha Rani (AIR 2003 SC 3093). 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.”;

that the Motor Vehicles (Amendment) Act 54 of 1994 came into force on 14.11.1994, whereas the accident took place in the year 1999 i.e., after the amendment, and therefore pay and recovery also cannot be ordered against the third respondent and relied upon the case law reported in

Vachala and others v. V.R.Kumar and another^[2], wherein it is held at para 5 as follows:

“5. The next contention of the learned Counsel for the appellant that carrying of passenger in the offending vehicle at best amounts to the driver committing a breach of the terms and conditions of the policy and, so, the insurer has to pay the compensation to the appellants and recover the amount so paid from the owner, cannot be accepted because carrying of passengers in the offending vehicle is contrary to the provisions of the Act and the Rules made thereunder and since the policy issued by second respondent does not even cover the risk of passenger in the offending vehicle. If the insurer covers the risk of some persons and lays down some conditions for its being made liable in respect of those persons, and if the insured violates some of those conditions, then there may be some force in the contention of the learned Counsel for appellants. When the insurer did not undertake to cover the risk of passengers in the offending vehicle, question of its being made liable in respect of the risk of such passenger does not arise.”

and finally prayed the Court to allow the appeal by exonerating the liability of the Insurance Company.

11. On the other hand, the learned counsel for respondent Nos.1 to 3/petitioners argued that the deceased was not the gratuitous passenger and he was going to Indore for selling coconut plants and further, the accident occurred due to rash and negligent driving of the driver of the second respondent; and that further, the petitioners are the wife, daughter and mother of the deceased and they are his dependants and are entitled for compensation. It is also argued that due to the death of the deceased, the petitioners are unable to maintain themselves and the deceased was travelling in the lorry as the owner of the goods and the Insurance policy covers the risk of the owner of the goods, therefore the Tribunal rightly fixed the liability against the appellant also and the said finding needs no interference and prayed the Court to dismiss the petition.

12. Having regard to the submissions made by the learned counsel appearing for both the parties, the point which is to be decided in this appeal is as follows:

Whether the appellant/third respondent is liable to pay

compensation to respondent Nos.1 to 3/petitioners or not?

13. **P O I N T:** A perusal of the evidence of PWs.1 & 2 and the documents Ex.A1-Copy of the First Information Report proved that the accident occurred due to rash and negligent driving of the first respondent. Further, the contesting respondent has not produced any evidence to disprove the evidence of PW.2 eye witness, therefore the finding of the Tribunal that the accident occurred due to rash and negligent driving of the first respondent needs no interference.

14. A perusal of the award passed by the Tribunal shows that the Tribunal after considering the evidence of PWs.1 & 2, granted compensation of Rs.1,74,000/- to the petitioners against the appellant and respondent Nos.1 & 2. The main contention of the appellant is that the deceased was not travelling in the lorry as the owner of the goods, but he was a gratuitous passenger. Burden lies on the petitioners to prove that the deceased was travelling in the lorry as owner of the goods i.e., coconut plants. PW.1 stated in her evidence that the deceased was doing business in sale of coconut plants and he travelled in the lorry as owner of the goods. To prove this fact, the petitioners have not filed any documentary evidence to show that the deceased took the entire lorry for transporting coconut plants from Yelamanchili to Indore i.e., in the Madhya Pradesh state. Except the oral testimony of PW.1, there is no evidence placed by respondent Nos.1 to 3/petitioners that the deceased was doing coconut plant business. As per Ex.A1 copy of the First Information Report, on the date of accident, apart from the deceased, there were seven people travelling in the said lorry. If the deceased was carrying 500 coconut plants in the said lorry, why he allowed other passengers to travel in the lorry is the fact to be proved. Therefore, the petitioners have not discharged the burden that the deceased was travelling as the owner of the goods, but not as gratuitous passengers.

15. The other contention of the learned counsel for the appellant is that

in view of the judgment of the Apex Court in **Baljit Kaur's case** (first cited supra), the appellant can recover the compensation amount after paying the petitioners, from the owners of the vehicle. For this contention, the learned counsel for respondent Nos.1 to 3/ petitioners contended that after amendment of the Act on 14.11.1994, the accident occurred as such the Insurance Company had no liability to pay first and recover from the owner of the vehicle and relied upon the case law of this Court in **Naga Tulasamma v. Golangi Bhoopathi** ^[3], wherein it is held that the deceased are unauthorised passengers travelled in the van basing on the decisions relied in Deddula Padmavathi and others Vs. Maddala Srinivasa Rao and another [2004 (5) ALD 228] and T. Hanumantha Rao and another Vs. Motepalli Venkataratnam and others [2004 (5) ALD 391] and it is further held that the insurance company is not liable to pay compensation to the appellants as rightly held by the Tribunal.”

16. Since the burden lies on the petitioners to prove that the deceased was travelling in the lorry as the owner of the goods and the said burden was not discharged as the owner of the goods vehicle had not paid any premium, it can be held that the deceased was a gratuitous passenger travelling in the lorry. Therefore, the appellant Insurance Company is not liable to pay compensation to the respondent Nos.1 to 3/petitioners and they are entitled to recover the balance compensation from respondents 1 & 2.

17. The learned counsel for the appellant/Insurance Company contended that he has no objection to forego half of the amount paid to the petitioners. Therefore, considering the ratio laid down by this Court in **Nagula Tulasamma's case** (third cited supra), the appeal is allowed setting aside the order dated 15.04.2005, passed in M.V.O.P.No.621 of 2000 by the Chairman, Motor Accident Claims Tribunal-cum-VI Additional District & Sessions Judge, (Fast Track Court), Narsapur, to

the extent of fastening the liability to the appellant/Insurance company.
The remaining portion of the relief that owner and driver of the vehicle
are liable to pay compensation to the petitioners is unaltered.

18. Accordingly, the appeal is allowed. No order as to costs.

19. Miscellaneous Petitions, if any, pending in this appeal shall stand
closed.

ANIS, J

Date: 21.08.2015

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[\[1\]](#) 2004 (1) SCALE 124

[\[2\]](#) 2004 (5) ALT 460

[\[3\]](#) 2015 (1) ALD 613