HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.86 OF 2006

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JUDGMENT:

The instant appeal is preferred by the 2nd respondent – M/s New India Assurance Company Limited in M.V.O.P. No.431 of 2002, aggrieved of the order and decree, dated 09-09-2005, in M.V.O.P. No.431 of 2002, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – VIII Additional District Judge, (Fast Track Court), Guntur (for short 'the Tribunal'), whereby and whereunder, a sum of Rs.1,74,500/- (Rupees one lakh seventy four thousand and five hundred) was awarded as compensation with interest at 6% per annum as against the claim of Rs.2,00,000/- (Rupees two lakhs) laid by the petitioners under Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short 'the Act') and Rules of Andhra Pradesh Motor Vehicles Rules, though, directing the owner and insurer jointly and severally liable to pay compensation, but, still, directed giving opportunity to the 2nd respondent to recover the amount paid by it from the 1st respondent.

2. The appellant herein is respondent No.2 - insurer, in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are mother and younger sister of deceased – Ch. Prabhakar, are the petitioners and respondent No.3, who is owner of Tractor and Trailer bearing registration No.AP 7G 4195 and 4196, is respondent No.1.

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

4. The facts, in brief, are that on 28-04-2001, while Chandragiri Prabhakar, son of the 1st petitioner and brother of the 2nd petitioner, along with some other

coolies was coming on
a Tractor bearing registration No.AP 7G 4195 from Thripuram village to Narammagudem with centering goods and at about
10.00 A.M., when it reached near Kota Mysamma temple, since the driver of the tractor drove it in a rash and negligent manner at high speed, it encountering a pit, due to which, the tractor link was disconnected with the trailer and the said Ch. Prabhakar fell between trailer and tractor, sustaining grievous injuries. He was immediately shifted to Government Hospital, Guntur, where he died while undergoing treatment. The petitioners claimed that the deceased was 22 years old, earning Rs.100/- per day and they were dependants on him and, therefore, sought to pay a sum of Rs.2,00,000/- as compensation from respondent Nos.1 and 2.

5 . Respondent No.1, owner of the tractor, remained *ex parte* before the Tribunal.

6. Respondent No.2 – Insurance Company opposed the claim, raising various pleas. The 2nd respondent has taken a specific plea in regard to use of the vehicle and violation there-of.

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

"1. Whether the accident occurred due to rash and negligent driving of the driver of Tractor No.AP 7G 4195?

2. To what compensation the petitioners are entitled and from whom?

3. To what relief ? "

8. During inquiry before the Tribunal, on behalf of the petitioners, the 2nd petitioner besides examining herself as PW.1, examined one Mr. Chandragiri Mallikarjuna as PW.2 and marked Exs.A-1 to A-6. On behalf of the contesting

respondent, one Kondavali Jayapaul was examined as RW.1 and marked Ex.B-1, copy of policy with terms and conditions.

9. The Tribunal, on issue No.1, on appraisal of evidence, held that due to rash and negligent driving of the driver of tractor, the accident has occurred and, thus, answered the issue in favour of the petitioners. On issue No.2, the Tribunal determined the compensation taking the age of deceased as 22 years, and since there was no proof of income, as projected by the petitioners, taken the notional income at Rs.15,000/- per annum and having deducted 1/3rd there-from, arrived his contribution to the petitioners at Rs.10,000/- per annum and applied multiplier ‘17’ and, thus, arrived at Rs.1,70,000/- towards loss of dependency, besides granting Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral expenses and, thus, a total sum of Rs.1,74,500/- was granted as compensation with interest at 6% per annum thereon. Concerning violation of conditions of policy, basing on Ex.B-1 and evidence of RW.1, though, discussed that as per terms and conditions of the policy, passengers were not covered, as the vehicle was goods carrying vehicle, still, while mulcting joint and several liability, also given opportunity to the appellant - Insurance Company to recover the amount paid by it from the 1st respondent.

10. It is the aforesaid order which is under challenge in the instant appeal, contending in the grounds of appeal that despite the appellant taking its specific plea that the deceased was
a gratuitous/unauthorized passenger travelling in goods vehicle, and that Ex.B-1 – insurance policy does not cover the risk of deceased, still, the Tribunal directed it to deposit the amount and recover the same from the 1st respondent which is against the principles laid down by the Hon’ble Supreme Court in **M/s National Insurance Company Ltd., v. Bommithi Subbayamma & others**. Even, concerning multiplier, the appellant states that the age of the mother of the deceased 50 years ought to have taken and multiplier ‘8’ instead of ‘17’ ought to have applied as the deceased died in an unmarried status.

11. Heard Sri B. Devanand, learned counsel for the appellant – Insurance Company and Sri N. Subba Rao, learned counsel for respondent Nos.1 and 2 - petitioners. Despite service of notice on respondent No.3, owner of the vehicle, none appears for the 3rd respondent.

12. Perused Ex.B-1 – insurance policy and evidence of RW.1 and also documentary evidence through Exs.A-1, A-2 and A-5. Exs.A-1, A-2 and A-5 would make it abundantly clear that the deceased Ch. Prabhakar on 28-04-2001 at about 8.00 A.M., accompanied by Mallikarjun and Nagender as per their Mastry's directions, taken the tractor and trailer bearing registration Nos.AP 7V 4195 and 4196 on hire and went to the house of Mr. Jala Sriramulu and collected the centering material and while returning, they sat on the material loaded in the trailer and when it reached Thripuram, the accident, as projected, had taken place, ultimately resulting the death of deceased – Chandragiri Prabhakar.

13. As seen from Ex.B-1 policy, it is an 'Act Policy' mentioned on its right side top corner, and the premium was collected at Rs.3,267/-(Rupees three thousand two hundred and sixty seven), and in clause-3 under General Exceptions of terms and conditions of the policy, it is specified thus:

> "Except so far as in necessary to meet the requirements of the Motor Vehicles Act the company shall not be liable in respect of death arising out of and in the course of employment of a person in the employment of the Insured or in the employment of any person who is indemnified under this Policy or bodily injury sustained by such person arising out of and in the course of such employment."

It is, thus, clear that the deceased can only be construed as gratuitous/unauthorized passenger. The order of the Tribunal, to the effect that in casting joint and several liability and then also directing the 2nd respondent – Insurance Company, who is appellant herein, to recover the amount paid by it from the 1st respondent, therefore, would not sustain and liable to be set aside.

14. During the course of arguments, it is submitted by both sides that half of the amount was already deposited as per the directions of this Court, dated 24-01-2006 in MACMAMP No.186 of 2006, and an opportunity was also given to the petitioner to withdraw the amount without furnishing any security, and subsequent petition filed by the appellant in MACMAMP No.431 of 2006 was dismissed on 03-02-2006, confirming the order, dated
24-01-2006 and, therefore, in case the amount was already withdrawn by the petitioners, to direct the Insurance Company to recover the same from the 1st respondent, owner of the vehicle. The same is acceded to. So far as balance amount is concerned, the petitioners are entitled to recover the same from the
1st respondent, and the Insurance Company – Appellant is exonerated from its liability, as mentioned in the above.

15. Accordingly, the appeal is allowed to the extent of exonerating the appellant - Insurance Company from its liability, setting aside the finding recorded by the Tribunal to that extent, while confirming the order in all other respects without going into the aspect touching determination of compensation, as the same falls outside the purview of the instant appeal in view of the request of Insurance Company having been acceded to. 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 18, 2015.

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