HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.816 OF 2005

JUDGMENT:

The New India Assurance Company Limited, Ongole, which is respondent No.2 in O.P. No.422 of 1997 is the appellant herein. Aggrieved of the order, dated 06-03-2002, in the above O.P. passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Ongole, whereby and whereunder, an amount of Rs.38,000/- was granted with interest at 9% per annum, as against the claim for Rs.50,000/-, the instant appeal is preferred.

2. The appellant herein is respondent No.2 in the O.P. before the Tribunal, while respondent No.1 is the petitioner and respondent No.2, who is owner of the lorry bearing No.AAK-5967 that involved in the accident, 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. By the aforesaid order, the Tribunal taking note of the fact that the petitioner was travelling in a goods vehicle and observing so, on issue No.2, that the petitioner was

travelling in a goods vehicle after attending to a marriage, but, placing reliance on the decision of the Hon'ble Apex Court in **New India Assurance Co. Ltd. v. Satpal Singh and others**[1] and the law laid down by the Hon'ble Apex Court therein, determined the compensation at Rs.38,000/- for the injuries sustained by the petitioner, and granted decree fastening joint and several liability on the insured and insurer of the vehicle involved in the accident.

5. The above order is under challenge in the instant appeal by the insurance company contending in the grounds of appeal that the Tribunal, somehow, overlooked the fact that travelling of any passenger in a goods vehicle is prohibited and that the petitioner was an unauthorised and gratuitous passenger, at the time of accident, in the lorry involved in the accident and that the judgment in **Satpal Singh's Case** (Supra 1) is not final, as similar matters were pending before the larger Bench of the Hon'ble Supreme Court, and thereby, sought to allow the appeal setting aside the order and decree passed by the Tribunal.

6. Heard Sri Kota Subba Rao, learned counsel for respondent No.2 (appellant), and Sri Unnam Muralidhar Rao, learned counsel for the petitioner (1^{st} respondent herein).

7. Despite service of notice, none appears for respondent No.2, owner of the lorry involved in the accident.

8. Perused the order under challenge and the evidence, both, oral and documentary, let in by the petitioner.

9. During the course of arguments, it is contended by the learned counsel for the insurance company (appellant) that since there has been change in the law by the decision rendered by the Hon'ble Apex Court in **New India Assurance Company Limited v. Asha Rani and others**[2] and since the order under challenge was rendered prior to the decision rendered by the Hon'ble Apex Court in the said case, the order and decree may be modified directing the insurance company to deposit the compensation and then to recover the same from the owner of the lorry.

10. Learned counsel for the petitioner (respondent No.1), has not disputed the submission of the learned counsel for the appellant based on the proposition of law laid down by the Hon'ble Apex Court and, of course, placed reliance on a decision of the Hon'ble Apex Court in **Manager, National Insurance Company Limited, v. Saju P. Paul and another**[3]**.**

11. The award under challenge was passed by the Tribunal on 06-03-2002. In **Saju P. Paul's Case** (Supra 3), the Hon'ble Apex Court, while referring to the various provisions of the Motor Vehicles Act, more particularly, the provisions of Section 147 of the Motor Vehicles Act, **Satpal Singh's Case** (Supra 1)**, Asha Rani's Case** (Supra 2)**, National Insurance Co. Ltd. v. Cholleti Bharatamma[4], National Insurance Co. Ltd. v. Baljit Kaur, and others[5], National Insurance Company Limited v. Kaushalaya Devi and others[6], National Insurance Company v. Roshanlal and another** (SLP (C) No.5699 of 2006) and **National Insurance Company Limited v. Parvathneni & another** (SLP(C) CC No.10993 of 2009)**,** observing that in peculiar facts occurring in the said decision, the claimant was allowed to withdraw the entire amount deposited by the Insurance Company along with the accrued interest and thereafter the insurance company may recover the amount paid from the owner by following the procedure as laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Challa Bharathamma and others[7].**

12. So, in view of the above submissions, more particularly, as the order under challenge was rendered on 06-03-2002, following the decision of the Hon'ble Apex

Court in **Asha Rani's case** (Supra 2), the order and decree are modified directing the 2nd respondent (appellant), insurer of the vehicle, to deposit the balance amount and thereafter to recover the same from the owner of the vehicle as per the procedure laid down by the Hon'ble Apex Court in **Challa Bharathamma's case** (Supra 7), but, however, the rate of interest granted by the Tribunal at 9% per annum is reduced to 7.5% per annum, on the entire compensation, from the date of petition till realisation as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others[8].**

14. Accordingly, the Civil Miscellaneous Appeal is disposed of modifying the impugned award passed by the Tribunal and reducing the rate of interest, as indicated above. There shall be no order as to costs.

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

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A. SHANKAR NARAYANA, J

February 26, 2015.
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[1] **(2000) 1 SCC 237**

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

[3] **(2013) 2 SCC 41**

[4] **(2008) 1 SCC 423**

[5] **(2004) 2 SCC 1**

[6] **(2008) 8 SCC 246**

[7] **(2004) 8 SCC 517**

[8] **2013ACJ1403 = 2013(4)ALT35**