

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.825 OF 2005

JUDGMENT:

The New India Assurance Company Limited, Ongole - respondent No.2, preferred the instant appeal, aggrieved of the order, dated 27-06-2001, in O.P. No.474 of 2000, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Ongole, whereby and whereunder, an amount of Rs.50,000/- was granted with interest at 12% per annum, which was also the amount claimed by the petitioner under Section 140 of the Motor Vehicles Act, 1988.

2 . The appellant herein, who is insurer of the lorry bearing No.AP-7-T-6549 that involved in the accident, is respondent No.2 in the O.P. before the Tribunal, while respondent Nos.1 to 4, who are wife, children and mother, respectively, of Bellamkonda Masthan @ Shaik Masthan, who died in the accident in the instant case, are petitioners and respondent No.5, who is owner of the above lorry, 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 would reveal that on 25-02-2000, one B. Mastan @ Shaik Masthan along with some others was travelling in the lorry bearing No.AP-7-T-6549, at about 2-00 a.m., since lorry was driven at high speed in a rash and negligent manner, it turned upside down on GNT road, near Railway Gate at Rajupalem. Forty (40) persons including Shaik Masthan had been to Kasumuru near Nellore from

their village Kurichedu for worshipping the God and when they were returning, the accident had occurred. Shaik Masthan died in the accident. He is hereinafter referred to as “deceased”. The claimants being legal heirs of the deceased, sought to grant Rs.50,000/- under no fault liability under Section 140 of the M.V. Act.

5. Both the respondents contested the claim. Substantially, the resistance offered by the 2nd respondent has been that the lorry was a goods vehicle and the deceased and others were not permitted to travel in a goods vehicle and since the lorry was hired for travelling, there was violation of terms and conditions of the insurance policy, and, therefore, it is not liable to indemnify the 1st respondent, owner of the lorry, and, sought to dismiss the claim petition.

6. The Tribunal has framed two (2) issues in the direction of fixing responsibility for the accident. During enquiry, the 1st petitioner examined herself as PW.1 and marked Exs.A-1 and A-2. On behalf of the respondents, no oral or documentary evidence was adduced.

7. The Tribunal having referred to the fact-situation occurring and placing reliance on the decision of this Court in **Divisional Manager, New India Assurance Company Limited, Ongole v. Tumu Gurava Reddy & others** and also the decision relied on by the 2nd respondent, insurer, in **New India Assurance Company, Shimla v. Kamala & others**, granted the relief by ordering respondent Nos.1 and 2, jointly and severally, to pay Rs.50,000/-, under Section 140 of the M.V. Act, with interest at 9% per annum.

8. It is the aforesaid order, which is under challenge in the instant appeal, on the ground that the Tribunal overlooked the ‘head

of limitations' as to use and prohibition contained in the policy.

The point involved in the judgment of the Hon'ble Apex Court in **New India Assurance Co. Ltd. v. Satpal Singh and others** was pending for consideration before the Larger Bench of the Hon'ble Supreme Court and in that view of the matter, sought to set aside the order under challenge.

9. Heard Sri Kota Subba Rao, learned counsel for respondent No.2 (appellant). Though, respondent Nos.1 to 5 were served with notice, none appears on their behalf.

10. Learned counsel for the insurer submits that since the order under challenge was rendered on 27-06-2001, by which time, even the decision of the Hon'ble Supreme Court in **Satpal Singh's case** (Supra 3) was not rendered, it would be fair enough to modify the order, in view of the law laid down by the Hon'ble Apex Court in **New India Assurance Company Limited v. Asha Rani and others** to recover the amount deposited by the insurer, by following the procedure laid down by the Hon'ble Apex Court in **National Insurance Co. Ltd. v. Challa Bharathamma and others**.

11. There is merit in the submission made by the learned counsel for the insurer, since the order under challenge was rendered on 27-06-2001, by which date the decision of the Hon'ble Apex Court either in **Satpal Singh's case** (Supra 3) or **Asha Rani's case** (Supra 4) were not available, and, therefore, acceding to the request of the learned counsel for the insurer raised at the time of arguments in the appeal, the order and decree are modified permitting the

2nd respondent - insurance company to recover the amount as per the procedure laid down by the Hon'ble Apex Court in **Challa Bharathamma's case** (Supra 5).

12. Accordingly, the appeal is disposed of modifying the order under challenge, with the directions, as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 26, 2015.

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