HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.1108 AND 1157 OF 2005

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COMMON JUDGMENT:

Both appeals arise out of one and the same common order, dated 09-12-2004, from two different O.P. Nos.568 and 570 of 2000, rendered by the learned Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District Judge, East Godavari at Kakinada (for short 'the Tribunal'), whereby and where-under while determining the compensation for the deaths occurred towards loss of dependency, having held that the deceased were travelling in a goods vehicle as gratuitous passengers and referring to the judgments in **New India Assurance Co. Ltd. v. Asha Rani and National Insurance Company Limited v. Baljit Kaur and others**, still, the Tribunal directed the 3rd respondent – M/s Oriental Insurance Company Limited initially to pay the compensation and then recover from the owner of the accident vehicle, by which, the Insurance Company got aggrieved and preferred these two appeals.

2. The former appeal is directed against that portion of common order which relates to M.V.O.P. No.568 of 2000 awarding compensation of Rs.2,27,000/- (Rupees two lakhs and twenty seven thousand), whereas, the latter appeal is directed against the other portion which relates to M.V.O.P. No.570 of 2000, awarding compensation of Rs.2,29,400/-(Rupees two lakhs twenty nine thousand and four hundred), respectively, passed by the Tribunal.

3. The appellant in both the appeals is one and the same Insurance Company and arrayed as respondent No.3 in both the O.Ps. before the Tribunal, while respondent Nos.1 to 5 in the former appeal and respondent Nos.1 to 4 in the latter appeal are petitioners, respectively, in O.P. No.568 and 570 of 2000, respectively, and respondent Nos.6 and 7, who are driver and owner of lorry bearing registration No.AP 9U 1818, respectively, are respondent Nos.1 and 2, respectively in both the OPs.

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

5. Turning to the facts, the petitioners, who are dependants and legal heirs of the deceased – P. Rambabu and P. Sriramulu, respectively, projecting them as coolies, earning Rs.3,000/- per month, contributing the entire amount for maintenance of their respective families, boarded along with some other coolies the offending lorry bearing registration No.AP 9U 1818 on 23-08-1999 at Kathipudi, and when the said lorry reached Kadiam bridge in the early hours, the 1st respondent, driver of the said lorry, since drove the lorry in a rash and negligent manner at high speed, it hit a car resulting in the ropes tied to the iron sheets cut and the iron sheets slipped and crushed both the deceased while they were asleep in the body of the lorry causing their instantaneous deaths. The Station House Officer, Kadiam Police Station registered a case in Crime No.106 of 1999 under Sections 304-A and 338 IPC against the 1st respondent. The petitioners, respectively, laid the claims under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short 'the Rules'), seeking Rs.2,50,000/- each as compensations.

6. Respondent Nos.1 and 2, who are driver and owner of the lorry, remained *ex parte* before the Tribunal.

7. Respondent No.3 – Insurance Company opposed the claims. It has taken a specific plea that both the deceased and some others intending to attend to sugarcane coolie work at Tadepalligudem, boarded the lorry by paying travelling charges, and since the vehicle was a goods vehicle, the deceased were unauthorized or gratuitous passengers and policy does not cover the risk of unauthorized or gratuitous passengers and, therefore, sought to exonerate it by dismissing the claim petitions.

8. Based on the pleadings, the Tribunal framed three identical issues in both the O.Ps. about fixing responsibility for the accident. During inquiry before the Tribunal, the 1st petitioner in both the O.Ps., who are wives of the deceased, respectively, were examined as PWs.1 and 2, besides examining another coolie as PW.3 and marked Exs.A-1 to A-5, which are attested copies of first information report; postmortem report of the deceased in O.P. No.568 of 2000; charge sheet, Motor Vehicles Inspector's report and post-mortem report of the deceased in O.P. No.570 of 2000. Thus, common evidence was let in, in both the O.Ps. treating O.P.No.568 of 2000 as the leading O.P.

9. The Tribunal, on appraisal of evidence of PW.3 supported by documentary evidence, held issue No.1 in favour of the petitioners that due to rash and negligent driving of the driver of lorry, who is the 1st respondent, the accident has occurred, resulting in deaths of both deceased. On issue No.2 in both the O.Ps, determined the compensation fixing monthly earnings and awarded Rs.1,92,000/- and Rs.1,63,200/-, respectively towards loss of dependency and future expectancy of life. However, on the question of liability, referring to the evidence of PW.3, an eye-witness to the occurrence, who was also travelling in the same vehicle, according to his deposition, excluded his evidence, on the ground that the name of PW.3 was not finding place in Ex.A-1, first information report and found that the deceased, who boarded the lorry to reach Tadepalligudem, as midway passengers, since Ex.A-1 does not reflect that they were engaged by the 1st respondent for loading and unloading purpose and, thus, the material clearly points out that they were unauthorized passengers in the offending lorry. The Tribunal having referred to the decisions of the Hon'ble Supreme Court in **Asha Rani and Baljit Kaur Cases** (Supra 1 and 2), somehow, observed that the 3rd respondent – Insurance Company can be directed to pay initially and recover the amount from the owner of the vehicle and, accordingly, passed that direction, which is impugned in the present appeals. The Tribunal also relied on
a decision of this Court in **United India Insurance Co.Ltd., v. Tam Tam Venkata Reddy & another,** and extracted the relevant portion and following the said decision, given such a direction to pay the compensation initially and

recover the same from the

2nd respondent – insured, as the accident has occurred prior to

03-12-2002.

10. It is the aforesaid direction, which is under challenge in the instant appeals preferred by the Insurance Company –

3rd respondent contending in the grounds of appeal that in view of the decisions in **Asha Rani and Baljit Kaur Cases** (Supra 1 and 2), the Tribunal ought to have exonerated the Insurance Company and basing on the judgment of the Hon'ble Supreme Court in **National Insurance Company Ltd., v. Bommithi Subbayamma and others,** the Tribunal ought to have directed the petitioners to recover the amount of compensation from the owner of vehicle and, therefore, the order passed by the Tribunal directing the appellant initially to deposit and recover the same from the insured is liable to be set aside.

11. Heard Sri K. Ashok Rama Rao, learned counsel for the appellant – Insurance Company in both the appeals and Sri Godey Satish, learned counsel for respondent Nos.1 to 5 in the former appeal and respondent Nos.1 to 4 in the latter appeal. The learned counsel for the appellant filed a memo not pressing the appeal against respondent Nos.6 and 7 in the former appeal and respondent Nos.5 and 6 in the latter appeal.

12. It is the submission of the learned counsel for the appellant that in **Baljit Kaur's Case** (Supra 2), the law was clarified by the Hon'ble Supreme Court holding that the decision in **Asha Rani's Case** (Supra 1) was prospective in effect and, therefore, no liability can be fastened on Insurance Company. Whereas, it is contended by the learned counsel for respondents – claimants that the Tribunal did not commit any error in making such a direction, directing the Insurance Company initially, to deposit and recover the same from the insured as in **Baljit Kaur's Case** (Supra 2).

13. The fact-situation is not in dispute between the parties. In fact, the finding

recorded by the Tribunal that both the deceased were mid-way passengers and unauthorized passengers as they boarded a goods vehicle, does not warrant any interference, since it does not suffer from any legal infirmity. The said finding is not challenged by the respondents – claimants. So, only question that arises for consideration is,

> whether the direction given by the Tribunal to the Insurance Company – 3rd respondent, initially, to deposit and then recover the same from the insured can be sustained?

14. Nothing more is required to discuss on the instant subject except referring to the observations of the Hon'ble Supreme Court contained in paragraph No.21 in **Baljit Kaur's Case** (Supra 2), since prospective effect was being given subsequent to the judgment in **Asha Rani's case**,(Supra 1), which clarification was to be found in **Baljit Kaur's Case (**Supra 2), certainly,
a direction as the one which was granted by the Tribunal initially to deposit and recover the amount from the insured, cannot be sustained. Therefore, the appeals are liable to be allowed.

15. The learned counsel for the appellant submits that initially in these appeals, a sum of Rs.25,000/-(Rupees twenty five thousand) was deposited in each appeal and requests for withdrawal of the said amount by the Insurance Company. In view of allowing these two appeals, the Insurance Company is entitled to refund of the amount deposited by it in these two appeals, respectively.

16. In the result, both the appeals are allowed, setting aside the common order and decrees, dated 09-12-2004, in M.V.O.P. Nos.568 and 570 of 2000, passed by the Tribunal so far as the appellant – Insurance Company, who is respondent No.3 in both the O.Ps. is concerned. There shall be no order as to costs.

17. As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand disposed of.

A. SHANKAR NARAYANA, J

April 02, 2015.

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