HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.714 OF 2005

And

CROSS OBJECTIONS (SR) No.20355 of 2005

-

COMMON JUDGMENT:

The instant appeal is preferred by respondent No.2/United India Insurance Company Limited, aggrieved of the order dated 18.11.2004 in O.P. No.287 of 2000 on the file of Chairman, Motor Vehicles Accidents Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District at N.T.R. Nagar (for short 'the Tribunal') whereby and where under the Tribunal granted a sum of Rs.1,80,000/- with interest at 9% per annum fastening liability on respondent No.2/insurance company by discarding the stand taken by respondent No.2 that the deceased was gratuitous passenger travelling in a goods vehicle.

2. The appellant herein is respondent No.2 before the Tribunal, while respondent Nos.1 to 3 and respondent No.4 herein, who are the claimants and owner of the lorry bearing registration No.MH 25 7837 respectively, were petitioners and respondent No.1 in the Original Petition.

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

4. The facts, in brief, are that on 24.07.1999 at about 9.30 A.M., one B. Chennaiah was travelling in a lorry bearing registration No.MH 25 7837 from Manneguda to Mambapur village, and when the lorry reached Banda Bavi, Ananthagiri Road, since the driver of the said lorry driven it in a rash and negligent manner, the lorry left the margin of the road towards left side and fell into the ditch, due to which B. Chennaiah sat in the cabin sustained injuries and was shifted to Osmania General Hospital, Hyderabad. While undergoing treatment he succumbed to injuries on 05.08.1999. The Station House Officer of Vikarabad Police Station, has registered a case in Crime No.222 of 1999. The petitioners claim that the deceased B.Chennaiah was earning Rs.3,000/- per month as labourer and used to contribute the entire earnings for the sustenance of the family, and, therefore, the petitioners sought Rs.2,00,000/-

towards compensation against respondents 1 and 2, who are the owner and insurer of the lorry respectively.

5. Respondent No.1 remained *ex parte* before the Tribunal. Respondent No.2 opposed the claim. A specific plea is taken that since the deceased was travelling in a goods vehicle, the insurance company cannot be made liable and yet another ground taken by the insurance company has been that the petitioners have to prove that only due to the rash and negligent driving of the driver of the lorry the accident occurred, and, therefore, the company cannot be made liable.

6. Basing on the pleadings, the Tribunal framed the following issues about the responsibility for the accident:

> "(i) Whether the accident took place on 24.7.99 at about 9.30 AM at Ananthagiri Road, near Banda Bavi, on account of the rash and negligent driving of the driver of the lorry bearing number MH25 7837?
>
> ii. Whether the petitioners are entitled to claim compensation and if so for how much amount? From which respondent?
>
> iii. To what relief?"

7. During enquiry before the Tribunal, petitioner No.1 got examined herself as P.W.1 besides examining K.Bheemaiah as P.W.2 and marked exhibits A.1 to A.5. On behalf of respondent No.2, one G.Rajeshwar Rao was examined as R.W.1 and the copy of insurance policy was marked as exhibit B.1.

8. The Tribunal rendered the order on 18.11.2004, which was subsequent to the law laid down by the Hon'ble Apex Court in **New India Assurance Company Limited v. Asha Rani and others**. On appraisal of evidence let in by P.W.2 and exhibits A1, A2 and A4, the Tribunal held issue No.1 in favour of the petitioners. On issue No.2, the Tribunal determined compensation taking the notional income at Rs.15,000/-, deducting 1/3rd there from towards personal expenses and applying multiplier '17' and taking the age of the deceased as 25 years, arrived at Rs.1,70,000/- towards loss of dependency. Besides the same, the Tribunal granted Rs.5,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses and Rs.3,000/- towards loss of estate. Thus, a total sum of

Rs.1,80,000/- was granted by the Tribunal as compensation with interest at 9% per annum.

9. Heard Sri E.Venugopal Reddy, learned counsel for the appellant, and Sri T.S.Rayalu, learned counsel for respondents 1 to 3. A memo was filed stating that respondent No.4 was unserved, but the orders show that the notice was sent to the same address as mentioned in the cause title in the aforementioned petition. Therefore, it has no consequence in deciding the controversy herein and also in view of the fact that the respondent No.4 herein, who was arrayed as respondent No.1 in the O.P, the owner of the vehicle, remained *ex parte* before the Tribunal.

10. The learned counsel for the appellant would contend that the facts would unravel that the deceased was travelling in a goods vehicle, and, therefore, the Tribunal was not right in fastening liability on the insurance company despite the fact, the law is well settled that the gratuitous passenger, who travels in a goods vehicle, is not entitled for compensation.

11. The submission of the learned counsel for respondents 1 to 3 is, that the copy of the policy filed by the petitioners, which is marked as exhibit A.5, reflects that the column '4' which is intended to show the details 'Licensed Carrying Capacity', 'Goods', 'Passengers' shows '162.00 Kgs' and '2', and, thus, would further reflect that the risk of two passengers is covered, and, therefore, the appellant is not right in contending that no liability can be fastened on it and the Tribunal was right in taking note of the claim and granting compensation by fastening liability on the insurance company also.

12. Perused the order under challenge and the evidence on record let in by both sides. Exhibit A.5 is the cover note filed by the petitioners. Of course, it relates to the vehicle involved in the instant accident whereas exhibit B.1 filed by respondent No.2 i.e., copy of the policy, which contains the very same columns, but in the policy, it is shown as '16200' under the head 'C.C' in the column No.6, and the net premium paid was Rs.2,809/- whereas the policy does not disclose the coverage of risk of any passengers at all. Admittedly, the vehicle was a goods carrying vehicle but not a passenger vehicle. There is no dispute in regard to the same between the parties, but only to the extent that exhibit A.5 reflects that the risk of passengers numbering 2 is covered and therefore, to maintain the award and decree passed by the Tribunal, which contention is raised by the learned counsel for respondents 1 to 3. Admittedly, the vehicle is goods vehicle but not a passenger vehicle. Certainly, no liability can be fastened on the Insurance Company to pay compensation to the passengers travelling in a goods vehicle as laid down by the Hon'ble Apex Court in **Asha Rani**'s case (Supra 1), **National Insurance Company Ltd., v. Baljit Kaur and others** and **National Insurance Company Limited vs. Bommithi Subbayamma.** The mere fact that the term mentioned as 'passengers' in the cover note, marked as exhibit A.5, cannot at all be construed as to cover the risk of the passengers. Therefore, the submission of the learned counsel for appellant and the stand of the appellant cannot be rejected and the appeal is allowed setting aside the order and decree so far as the appellant is concerned, however, maintaining the same in all other respects as regards respondent No.1/owner of the vehicle is concerned. It is made clear that the appellant, who is respondent No.2 in the O.P, is exonerated from its liability to make compensation.

13. In so far as cross objections in S.R. No.20355 of 2005 filed by respondents 1 to 3 in the appeal are concerned, it is stated that the Tribunal was not right in not granting Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of consortium. The Tribunal has granted Rs.5,000/- towards loss of consortium and Rs.3,000/- towards loss of estate. The petitioners are entitled to Rs.15,000/- towards loss of consortium and Rs.13,000/- towards loss of estate as against Rs.5,000/- and Rs.3,000/- granted by the Tribunal respectively. Thus, the cross-objections are allowed in part. It is made clear that only respondent No.1, owner of the lorry, in the O.P., who is respondent No.4 herein, is liable to pay the entire compensation of Rs.2,00,000/- which includes the enhanced compensation of Rs.20,000/-. So far as rate of interest at 9% per annum granted by the Tribunal is concerned, the same is reduced to 7.5% per annum in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others.**

14. In the result, the appeal is allowed, and the cross-objections (S.R.) is allowed in part, enhancing the compensation and reducing the rate of interest, as indicated above. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

Date: **25.02.2015**

MVA

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.714 OF 2005

And

CROSS OBJECTIONS (SR) No.20355 of 2005

–

Dt. 25.02.2015

MVA