HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.3064 OF 2005

JUDGMENT:

M/s. New India Assurance Company Limited preferred the instant appeal, under Section 173 of the Motor Vehicles Act, 1988, aggrieved of the direction to initially pay and then to recover the compensation amount from the insured by the order, dated 28-01-2005, of the learned Chairman, Motor Accidents Claims Tribunal - cum - IV Additional District and Sessions Judge (Fast Track Court), Ranga Reddy District, at L.B. Nagar, in O.P. No.311 of 2002.

2. The appellant herein - M/s. New India Assurance Company Limited is respondent No.2 in the above O.P., while respondent Nos.1 and 2, who are parents of Md. Aslam Shareef, who died in the accident in the instant case, are the petitioners and respondent No.3, who is owner of the auto-trolley bearing No.AP-9-T-6905, is respondent No.1.

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

4. The Tribunal by the aforesaid order granted a sum of Rs.1,52,000/- towards compensation to the petitioners for the death of their son, Md. Aslam Shareef, who was aged 14 years at the relevant time, with interest at 9% per annum while observing that the deceased was a gratuitous passenger; and, still, made the above direction and the same is under challenge in the instant appeal.

5. Coming to the facts, on 31-12-2001 at about 4-00 p.m., while Md. Aslam Shareef was proceeding towards Housing Board from Z.T.C.

in the auto-trolley bearing No.AP-9T-6905, when it reached Ambus Bakery, since driver of the trolley drove it in a rash and negligent manner at high speed and applied the brakes suddenly, he fell down from the auto-trolley and sustained head injury. He was immediately shifted to Padmavathi Srinivasa Nursing Home, Housing Board Colony, where he succumbed to the injuries at 5-00 p.m., while undergoing treatment.

6 . The petitioners claim that Md. Aslam Shareef, who is hereinafter referred to as ‘deceased’, was 14 years old and was a student, at the relevant time, and, therefore, sought to grant a sum of Rs.2,00,000/- as compensation by laying the claim under Section 166 of the Motor Vehicles Act, 1988 (for short ‘the Act’).

7 . Respondent No.1, who is owner of the auto-trolley that involved in the accident, remained *ex parte* before the Tribunal.

8 . Respondent No.2, insurer of the auto-trolley, opposed the claim. It is its specific case that the deceased was a gratuitous passenger as he was travelling in the auto-trolley, which was a goods vehicle, and, therefore, sought to dismiss the claim petition.

9. Based on the above pleadings, the Tribunal framed three (3) issues in the direction of fixing responsibility for the accident.
During enquiry, petitioner No.1 was examined as PW.1 and an eye-witness to the accident as PW.2 and marked Exs.A-1 to A-7.
On behalf of respondent No.2, insurer, no witnesses were examined and no documents were filed.

10. On appraisal of evidence, the Tribunal held issue No.1 in favour of the petitioner. However, on issue No.2, while determining the compensation at Rs.1,52,000/-, dealing with the liability of the

insurance company, tendered a definite finding that the deceased was a gratuitous passengers as the limitations mentioned in Ex.B-1, insurance policy of the auto-trolley involved in the accident, do not permit to travel therein, but, however, directed the insurance company, to initially deposit the amount and then to recover the same from the insured.

11. It is the aforesaid direction, which is under challenge in the instant appeal filed by the insurer of the vehicle involved in the accident contending in the grounds of appeal that the Tribunal, somehow, overlooked the decision of the Hon'ble Apex Court in **National Insurance Company Ltd. v. Bommithi Subbhayamma and others** and **M.V. Jayadevappa and others v. Oriental Fire and General Insurance Company Limited and others,** as the Supreme Court held that it was not the intention of the Legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into nor any premium was paid to the extent of the benefit of insurance to such category of people and held that insurance company is not liable, and, therefore, sought to dismiss the claim petition by allowing the appeal.

12. Heard Sri C. Prakash Reddy, learned counsel for respondent No.2 (appellant), and Sri C.Vikram Chandra, learned counsel for the petitioners.

13. Though, the 3rd respondent, owner of the auto-trolley that involved in the accident, is unserved, since he remained *ex parte* before the Tribunal and suffered decree, his absence do not make any difference in deciding the controversy herein.

14. During the course of arguments, learned counsel for the

petitioners fairly concedes the settled legal proposition as per the decisions of the Hon'ble Apex Court in **New India Assurance Company Limited v. Asha Rani National Insurance Company Limited v. Baljit Kaur and others,** and **Bommithi Subbhayamma's Case** (Supra 1), in such an event, there is no necessity to probe further and refer to the decisions, since in **Baljit Kaur's Case** (Supra 4), the law is clarified giving prospective effect to the decision rendered by the Hon'ble Supreme Court in **Asha Rani's Case** (Supra 3), the Tribunal was not right in directing the insurance company to initially deposit the compensation and then to recover the same from the insurer, as such, the same is hereby set aside exonerating the insurance company from its liability. As a consequence, owner of the auto-trolley, who is respondent No.1 in the O.P, is wholly responsible to pay the compensation awarded by the Tribunal.

15. Accordingly, the appeal is allowed setting aside the order under challenge to the extent indicated above. 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

April 2, 2015.

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