HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.1527 OF 2004

JUDGMENT:

The instant appeal is preferred by the claimants-petitioners in M.V.O.P. No.1048 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Guntur (for short, 'the Tribunal') mainly on the ground that the Tribunal, by the order dated 23.01.2004, has not fastened liability on respondent No.2-Insurance Company, though, it is the insurer of the accident vehicle belonging to respondent No.1, while granting compensation of Rs.1,50,000/- with interest at 9% per annum against respondent No.1-owner.

2. Appellant Nos.1 to 6 herein are petitioner Nos.1 to 6, while respondent Nos.1 and 2 herein, who are the owner and insurer of lorry bearing registration No.AP 7U 4239, respectively, are respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 09.09.1999 at about 3-30 p.m., one Polanki Srinivasa Rao, who was husband of petitioner No.1, father of petitioner Nos.2 to 4

and son of petitioner Nos.5 and 6, along with some other coolies were travelling from Kajipalem, to Bapatla in a lorry bearing registration No.AP 7U 4239 for attending Telugu Desam Party meeting and since the driver of the lorry drove it in a rash and negligent manner at high speed and applied sudden brakes, the deceased fell down and sustained head injury and died instantly. The petitioners, claiming that the deceased was 32 years old, earning Rs.60/- per day and used to contribute entire amount to the family, sought a sum of Rs.1,50,000/- from respondent Nos.1 and 2, who are owner and insurer of the accident vehicle respectively.

5. Respondent No.1-owner of the lorry remained *ex parte* before the Tribunal. Respondent No.2-insurer of the lorry opposed the claim raising various pleas and taking a specific plea that the deceased was not authorized to travel in a goods vehicle and, thus, the terms and conditions of the policy were violated and, therefore, no liability can be fastened on it.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, petitioner No.1 examined herself as P.W.1 besides examining an eyewitness as P.W.2 and marked Exs.A.1 to A.6 to substantiate their claim; whereas, on behalf of respondent No.2, its official from local branch office by name D.Ravi Kumar was

examined as R.W.1 and Exs.B.1 and B.2, which are summons received by respondent No.2 along with documents in M.V.O.P. No.1060 of 2000 and copy of insurance policy, respectively, were marked.

7. On appraisal of evidence let in by the petitioners, the Tribunal held issue No.1 in favour of the petitioners recording a finding that due to rash and negligent driving of the driver of the lorry, the accident had occurred. On issue No.2, the Tribunal granted the entire amount of Rs.1,50,000/- with interest at 9% per annum and even given directions as to the apportionment of the amount among the petitioners, but however, so far as fastening liability on respondent No.2 and the violation of terms and conditions of insurance policy are concerned, by discussing the same in paragraph No.20 of its order thus:

> "Therefore, the consistent evidence of P.W.2 corroborated with Exs.A.1, A.2, A.5 and the pleadings in the petition well established that the presence of the deceased Srinivasarao is as passenger in the lorry bearing No.AP 7U 4239. In the decision NEW INDIA ASSURANCE COMPANY LTD. VS. ASHA RANI AND OTHERS. Reported in 2003(1) ALD 35(SC) wherein their Lordships held that:
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> > "After Amendment of Act 6 of 1994 the insurer is liable to pay compensation only to the owner of goods or his authorized representative dying or suffering any bodily injury in an accident while travelling in a goods vehicle. The Insurance company is not liable to pay compensation to the passengers in a goods carriage."

> Undisputedly, the lorry bearing No.AP 7U 4239 is insured under Ex.B.2 as a goods carriage. Therefore, Ex.B.2 does not cover the liability of the passenger who involved in the accident. Section 147 of the Act 6 of 1994 only covers the risk of owner of goods or his authorized representative carried in the goods vehicle. Therefore, by replying the above decision, I find force in the contention of the 2nd respondent that the insurer/R2 is not liable to pay compensation as the terms of the Ex.B.2 policy are violated."

held that the insurer is not liable to indemnify the insured.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal went wrong in exonerating respondent No.2-Insurance Company, though, the vehicle is covered by valid insurance policy. Even it is stated that the compensation of Rs.1,50,000/- granted by the Tribunal is on lower side, though, the claim was only for Rs.1,50,000/-, and, therefore, sought to enhance the compensation.

9. No representation for the appellants. Heard Sri Ramachandra Reddy Gadi, learned Standing Counsel for respondent No.2-Insurance Company. Appellants have endorsed in the cause title of the grounds of appeal that respondent No.1-owner is not a necessary party. In fact, respondent No.1 remained *ex parte* before the Tribunal and suffered decree. Therefore, his absence

would not make any difference in deciding the controversy herein.

10. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the parties. The facts in F.I.R. marked as Ex.A.1, charge sheet as Ex.A.2, Motor Vehicle Inspector's report as Ex.A.3 and inquest report as Ex.A.4 would clinchingly establish that the deceased was one among 40 others, who was travelling in the said lorry to attend Telugu Desam Party meeting. In such event, certainly, it cannot be construed that the deceased was a labourer employed under the owner of the vehicle and certainly, it is an incorrect plea raised before the Tribunal and the Tribunal rightly recorded the finding holding that there was violation of terms and conditions of insurance policy as the deceased was not authorized to travel in the goods vehicle in view of the judgments of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**[1] and **National Insurance Company Ltd., v. Baljit Kaur and others**[2]. Since the order was rendered on 23.01.2004, the finding recorded by the Tribunal exonerating respondent No.2-Insurance Company cannot be faulted and does not warrant interference.

11. Accordingly, the instant appeal is dismissed

confirming the order passed by the Tribunal under challenge. There shall be no order as to costs.

12. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

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A. SHANKAR NARAYANA, J

8th March, 2016

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[1] (2003) 2 SCC 223

[2] 2004 ACJ 428 (SC)