

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.963 of 2009

JUDGMENT:

Aggrieved by the order and decree, dated 29.09.2008, passed in M.V.O.P.No.435 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Guntur, whereby and whereunder a sum of Rs.2,70,800/- was granted as compensation, while dismissing the petition against respondent No.2-Insurance Company, the present appeal is preferred by the petitioners – claimants seeking enhancement of compensation, while placing reliance on two decisions of the Hon'ble Supreme Court touching conventional sum and interest, respectively, and also seeking to fasten liability on respondent No.2.

2. The appellants herein are the parents and the minor sisters of one Nunsavath Nagaraju Naik (deceased), while respondent Nos.1 and 2, who are the owner and the insurer of the auto bearing registration No.AP 16 V 1930, respectively, were respondent Nos.1 and 2, respectively, in the original petition.

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

4. The facts would show that the said N. Nagaraju Naik (deceased), aged about 20 years, was eking out livelihood by doing coolie work earning Rs.100-150/- per day. While he was travelling with others on 19.03.2006, in an auto bearing No.AP 16 V 1930 to go to coolie work and reached Nageswarapuram Tanda at about 8.00 a.m., the side rod of the auto was broken due to rash and negligent driving of its driver, as a result of which, the said Nagaraju Naik fell down from the auto and died instantly. Stating that they are all dependants, the parents as well as the younger sisters filed the claim petition, requesting to grant compensation of Rs.3,00,000/- with interest at 18% per annum thereon under Section 166 of the Motor Vehicles Act, 1988.

5. Before the Tribunal, both the respondents filed counters. Respondent No.1, owner of the auto, contended that as the auto was insured with respondent No.2, respondent No.2 is liable to pay the compensation and, thereby, sought to dismiss the claim petition against him. Respondent No.2 opposed the claim contending that even as per the First Information Report, the driver of the auto allowed 26 persons to travel in the auto and, thus, sought to dismiss the claim petition against it also, in view of violations of terms and conditions of the policy.

6. On the basis of the said pleadings, the Tribunal

has framed three issues.

7. During enquiry, petitioner No.1 examined himself as P.W.1, besides examining an eye-witness as P.W.2, and marked Exs.A1 to A4. On behalf of the respondents, the Legal Manager of the Insurance Company was examined as R.W.1, besides examining a Junior Assistant in the RTO Office as P.W.2, through whom Ex.B3- registration extract of the auto was marked, to prove that the driver did not have valid driving licence, and marked Exs.B1 to B3.

8. The Tribunal, having held issue No.1 in favour of the petitioners, however, on issue No.2, elaborately dealing with the evidence of R.Ws.1 and 2 and Exs.B1 to B3, arrived at the finding that the driver, who is no other than the owner of the vehicle, was not possessing valid driving licence when the accident has taken place, and placing reliance on various decisions of the Hon'ble Supreme Court referred to in **National Insurance Company Ltd. v. Swaran Singh**^[1], dismissed the claim petition against the Insurance Company, while directing respondent No.1 to pay the compensation determined by it.

9. On the ground that the compensation granted by the Tribunal was on lower side, though, it granted Rs.2,70,800/- as against the claim of Rs.3,00,000/-, and contending that the Tribunal ought not to have dismissed the claim petition against respondent No.2 and ought to

have fixed joint and several liability against both the respondents, the petitioners preferred the instant appeal.

10. Heard Sri B.Parameswara Rao, learned counsel for the appellants, and Sri S.Daivabhimanam, learned Standing Counsel for respondent No.2 – Insurance Company. Though, service was completed on respondent No.1, none appears for him.

11. During the course of arguments, learned counsel for the petitioners did not dispute the law declared by the Hon'ble Supreme Court in **Swaran Singh's** case referred supra. Further, the evidence of R.W.2 and the documents marked as Exs.B2 and B3 would clearly show that the driver, who is respondent No.1, being the owner of the auto, did not possess valid driving licence, which amounts to fundamental violation of the terms and conditions of the policy. Though, respondent No.1 contested the claim by filing counter, he has not stepped into the witness box and file the driving licence. Therefore, viewed from any angle, the findings recorded by the Tribunal concerning dismissal of the claim petition against respondent No.2 do not warrant interference. Hence, the award under challenge to the extent of dismissing the claim petition against respondent No.2 – Insurance Company, is confirmed.

12. Since the determination of compensation, in

view of the recent pronouncements of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[2] and **Rajesh and others v. Rajbir Singh and others**^[3], requires modification and since the learned counsel for the petitioners requests to grant Rs.3,00,000/- claimed by the petitioners, the said amount can be granted, without going into the determination of compensation once again basing on the decisions of the Hon'ble Supreme Court referred to above and by confirming the liability fixed on respondent No.1, owner of the crime vehicle.

13. Thus, the petitioners are entitled to compensation of Rs.3,00,000/- (Rupees three lakhs), as against Rs.2,70,800/- granted by the Tribunal, and the same is, accordingly, granted. Interest at 7.5% per annum granted by the Tribunal is maintained on the entire amount awarded, from the date of petition till realisation.

14. Accordingly, the appeal is allowed to the extent indicated above, modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

**JUSTICE A.SHANKAR
NARAYANA**

04.08.2016

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[\[1\]](#) 2004 ACJ 1 (SC)

[\[2\]](#) (2009) 6 Supreme Court Cases 121

[\[3\]](#) 2013 ACJ 1403