HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MA CMA Nos.1905, 1908, 2024, 2640, 2645 AND 3001 OF 2009

AND

CROSS OBJS. (SR) No.31996 of 2009 IN MACMA No.1905 of 2009

CROSS OBJS. (SR) No.31989 of 2009 IN MACMA No.1908 of 2009

CROSS OBJS. (SR) No.31998 of 2009 IN MACMA No.2024 of 2009

CROSS OBJS. (SR) No.31992 of 2009 IN MACMA No.2640 of 2009

CROSS OBJS. (SR) No.31994 of 2009 IN MACMA No.2645 of 2009

COMMON JUDGMENT:

Since all these Civil Miscellaneous Appeals, though, arise out of different claim petitions, relate to one and the same accident that took place on 14.08.2001 at about 9.30 p.m. near Mallur Tank-bund, Nizamsagar Mandal, Nizamabad District while the petitioners (claimants) along with 20 others were travelling in a Trolley bearing No.AP-25-T-7369 attached to the Tractor bearing No.AP-25-E-7368, since driver of the tractor drove it at high speed in a rash and negligent manner, lost control over the tractor resulting in trolley turning upside down and it fell into the tank (*cheruvu*) which ultimately lead to seven (7) deaths and 17 persons getting injured, they are being disposed of by this common judgment. The legal representatives of the deceased are the claimants (petitioners) in the respective O.Ps., claiming various amounts referring to the relevant facts.

2. All these Civil Miscellaneous Appeals are preferred by the New India Assurance Company Limited, which is insurer of the

tractor-trolley bearing No.AP-25-T-E-7368 & 7369, belonging to one S. Jagan Mohan Rao - insured (who is respondent No.1 in all the O.Ps.), that involved in the accident, against the orders and decrees dated 24.01.2008 in O.P. Nos.1913, 2060, 1915, 1914, 1916 and 2059 of 2001, respectively, passed by the learned Chairman, Motor Accidents Claims Tribunal, Nizamabad - cum - I Additional District Judge, Nizamabad (for short 'Tribunal').

3. The Tribunal framed three (3) issues in each of the O.Ps. in order to fix responsibility in taking place of the accident and to determine just compensation to which the petitioners are entitled.

4. During enquiry, on behalf of the petitioners (claimants), PWs.1 and 2 were examined and Exs.A-1 to A-4 were marked to substantiate their respective claims. On behalf of the insurance company, concerned Branch Manager was examined as RW.1 and marked as many as (21) documents in order to prove that there has been fundamental violation of terms and conditions of the insurance policy and sought exoneration.

5. The Tribunal found both issue Nos.1 and 2 in favour of the petitioners, determined the compensation and granted Rs.4,10,000/-, Rs.3,14,000/-, 4,10,000/-, 3,62,000/-, Rs.4,10,000/- and Rs.4,10,000/- in the respective O.Ps. However, the Tribunal while mulcting liability on the insurer, having referred to **National Insurance Company**

Limited v. Baljit Kaur and others[1], somehow, directed the insurer to initially deposit the compensation amount and recover the same from the insured by initiating the proceedings before the executing Court against him (insured).

6. The aforesaid direction of initial payment and initiation of consequent proceedings for recovery of the amount before the executing Court has been under challenge in all these appeals by the insurer, on the ground that the insured has committed breach of terms and conditions of the insurance policy by allowing as many as thirty (30) persons to travel in the tractor-trolley, though, it was supposed to be used for agricultural purpose only and that the Tribunal ought not to have fastened even that initial liability on it.

7. Seeking enhancement of compensation, the respondents – claimants in M.A.CMA.Nos.1905, 1908, 2024, 2640 and 2645 of 2009 filed cross objections.

8. Heard Sri Sriman, learned standing counsel for the insurer (appellant) in all these appeals and Sri L. Dayakar Reddy, learned counsel for the respondents – claimants.

9. Despite service of notice on the insured, none appears on his behalf.

[1] 2004 (1) ALD 98 (SC)

10. There cannot be any dispute in regard to the finding recorded by the Tribunal holding that there was violation of terms and conditions of the insurance policy by the insured. The Tribunal even referred to **Baljit Kaur's Case** (Supra 1) in paragraph No.28 of the order under challenge stating that the Hon'ble Supreme Court held that the insurer has to pay compensation to the claimants and recover the same from the insured, if the gratuitous passenger is a third party to the proceedings, and given such a direction, somehow, overlooking the fact that the orders under challenge were being passed by it on 24.01.2008. The Hon'ble Supreme Court held in **Baljit Kaur's Case** (Supra 1) that the law declared in **New India Assurance Company Limited v. Asha Rani**[2] is prospective. The Hon'ble Surpeme Court in **Baljit Kaur's Case** (Supra 1), exercised the power under Article 142 of the Constitution of India in giving such direction, which power is not vested either with the Tribunals or the High Courts.

11. The sum and substance of cross objections has been that conventional sum, ought to be granted by the Tribunal, was not granted and the income of the deceased was considered on lower side, without properly appreciating the evidence on record. It is the submission of learned counsel for respondents – claimants that conventional sum may be increased, in view of the rulings of the Honourable Supreme Court in **Sarla Verma v. Delhi Transport**

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[2] **(2003) 2 SCC 223 FB**

Corporation[3] and **Rajesh and others v. Rajbir Singh and others**[4], by re-determining the compensation basing on the evidence of PW.1 in each of the cases. It is also the submission of the learned counsel, that the initial liability fixed on the insurer cannot be upset by setting aside the finding recorded by the Tribunal, as the deceased were engaged by the respondent - insured, owner of the vehicle, to work on the tractor and trailor as labourers.

12. So far as the contention of learned counsel for respondents–claimants that the deceased were working under the respondent – insured as labourers and engaged on tractor and trailor is concerned, there is absolutely no material, except the vague assertions made by the respective claimants in the aforesaid five appeals. In fact, the respondents – claimants have to summon the respondent - insured and examine him, to prove their stand that the deceased were employed by him, which the claimants have not done and, therefore, that stand of the claimants remains unsubstantiated.

13. So far as the income is concerned, the Tribunal has considered the evidence of PW.1 in all the five appeals in accordance with the evidentiary rule and basing on appreciation of evidence on record, fixed the income of the deceased at Rs.3,000/- per month in all the aforesaid five appeals. Certainly, the same cannot be faulted, as no legally acceptable evidence is forthcoming from the side of the

[3] (2009) 6 SCC 121
[4] (2013) 9 SCC 54

respondents – claimants to prove their stand that the deceased were earning a particular income.

14. Now turning to the conventional sum, the Tribunal has awarded Rs.2,000/- towards funeral expenses in all the O.Ps. In fact, towards conventional sum, the respondents – cross objectors are entitled to Rs.50,000/- under all heads, in view of the decision of the Honourable Supreme Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company[5].** Hence, the compensation granted by the Tribunal in O.P.Nos.1913, 2060, 1915, 1914 and 1916 of 2001 is enhanced from Rs.4,10,000/- to Rs.4,60,000/-, Rs.3,14,000/- to Rs.3,64,000/-, Rs.4,10,000/- to Rs.4,60,000/-, Rs.3,62,000/- to Rs.4,12,000/- and Rs.4,10,000/- to Rs.4,60,000/-, respectively. The Tribunal has granted interest at 7.5% per annum. Since the said rate of interest is in tune with the rate of interest at 7.5% awarded by the Honourable Supreme Court in **Rajesh's Case (supra 4),** the same is maintained on the enhanced amount also. However, the submission of the learned counsel for respondents – claimants that the finding recorded by the Tribunal fixing initial liability on the insurer to pay the compensation amount and to recover the same from the owner has to be withheld is concerned, for the reasons aforementioned, the said submission is rejected.

15. Therefore, such a direction given by the Tribunal, which is under challenge in the appeals, is liable to be set aside and is,

accordingly, set aside exonerating the insurer, in all these appeals, from the liability fastened on it by the Tribunal.

16. Since learned counsel for the insurer would submit that when these appeals were preferred, this Court, while granting stay, directed the insurer to deposit half of the decreetal amount together with costs and interest within a specified period and the same was complied with and even the respective claimants have withdrawn the said amount, the insurer is directed to recover the amounts withdrawn by the respective claimants (petitioners) from the insured and the claimants (petitioners) are at liberty to recover the balance compensation from the insured.

17. Accordingly, all these Civil Miscellaneous Appeals are allowed, as indicated above, and the cross objections are partly allowed enhancing the compensation granted by the Tribunal in O.P.Nos.1913, 2060, 1915, 1914 and 1916 of 2001 from Rs.4,10,000/- to Rs.4,60,000/-, Rs.3,14,000/- to Rs.3,64,000/-, Rs.4,10,000/- to Rs.4,60,000/-, Rs.3,62,000/- to Rs.4,12,000/- and Rs.4,10,000/- to Rs.4,60,000/-, respectively, with interest at 7.5% per annum from the date of petition till realization. The enhanced amount shall be apportioned among the claimants in the respective O.Ps. in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal. There shall be no order as to costs.

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[5] LAWS (SC) -2014-4-67

As a sequel thereto, Miscellaneous Applications, if any, pending in this batch of appeals stand disposed of.

A. SHANKAR NARAYANA, J

November 18, 2016.

PV/MD