

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.1334 of 2009

JUDGMENT:

The present appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is preferred by the New India Assurance Company Limited, which is respondent No.2 in O.P.No.1392 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Nalgonda (for short, 'the Tribunal'), aggrieved by the order and decree, dated 11.10.2006, passed in the said original petition, on the ground that the deceased was travelling as an unauthorised passenger in a lorry bearing registration No. AEK 5089, which was a goods vehicle, but the Tribunal, without properly appreciating the said fact, gave a direction to it to initially deposit the compensation amount of Rs.1,77,500/- and recover the same from respondent No.1, owner of the offending vehicle, which runs contra to the law declared by the Hon'ble Supreme Court.

2. Heard Sri P.Bhanu Prakash, learned Standing Counsel for the appellant, Sri V.Narsimha, learned counsel for respondent Nos.1 to 5 - petitioners, and Sri Y. Ramatirtha, learned counsel for respondent No.6, owner of the lorry.

3. Perused the order under challenge and evidence on record.

4. By the order under challenge, the Tribunal granted compensation of Rs.1,77,500/- for the death of one M. Sathaiah. The claimants, who are the legal representatives of the deceased, filed the claim petition stating that on 07.05.2001 at about 6.00 a.m., the said Sathaiah was travelling as the owner of the goods i.e., rice bags from Vijayawada in a lorry bearing No. AEK 5089, and reached Cheruvukatta of Kanchikacherla, and due to rash and negligent driving of the lorry driver, the lorry dashed a tipper bearing No. AP 7299 coming in opposite direction, as a result of which, the said Sathaiah died instantly and, thereby, sought a compensation of Rs.2,50,000/-, stating that the deceased, aged 32 years, was earning Rs.4,000/- per month.

5. The aforesaid order is under challenge in the instant appeal filed by the Insurance Company by taking a specific plea that the deceased was travelling as an unauthorised passenger.

6. The Tribunal recorded a definite finding that the deceased was travelling as an unauthorised passenger, but, somehow, gave a direction that the appellant - Insurance Company shall, initially deposit the compensation amount and recover the same from the

owner of the lorry, by the order under challenge, which was rendered on 11.10.2006 i.e., long after the law declared by the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**¹, **National Insurance Company Ltd., v. Baljit Kaur and others**² and **National Insurance Company Limited v. Bommithi Subbayamma**³

7. Though, learned counsel for respondent Nos.1 to 5 – petitioners pleaded that the deceased was travelling as owner of the goods, the petitioners have not filed separate appeal challenging the definite finding recorded by the Tribunal to the effect that the deceased was travelling as an unauthorised passenger. However, the direction given by the Tribunal would not sustain, as it runs contra to the law laid down by the Hon'ble Supreme Court in the aforesaid decisions, and, therefore, the order under challenge is liable to be set aside so far as the appellant - Insurance Company is concerned.

8. At this stage, learned counsel for the appellant represents that the appellant has deposited half of the amount awarded by the Tribunal pursuant to the order of this Court, dated 05.09.2007, in MACMAMP.No.4781 of 2007, wherein, while granting stay, the Insurance Company was directed to deposit half of the amount

¹ (2003) 2 SCC 223

² 2004 ACJ 428 (SC)

³ 2005 ACJ 721

awarded by the Tribunal, together with costs and interest, within a period of six weeks, and on such deposit, the petitioners were permitted to withdraw the said amount without furnishing any security.

9. Accordingly, the appeal is allowed, setting aside the order and decree so far as the appellant – Insurance Company, which is respondent No.2 in the original petition, is concerned and confirming the same in all other respects so far as owner of the vehicle, respondent No.6 herein, is concerned. The appellant – Insurance Company is at liberty to recover the amount withdrawn by the petitioners from the owner of the vehicle. The petitioners are at liberty to proceed against the owner of the vehicle for recovery of balance compensation awarded.

10. Miscellaneous applications, if any pending in the instant appeal, shall stand closed. No order as to costs.

JUSTICE A.SHANKAR NARAYANA

08.08.2016
v v