**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**M.A.C.M.A. No.2698 OF 2005**

**JUDGMENT:**

The sole Respondent - M/s. United India Insurance Company Limited preferred the instant appeal, aggrieved by the award of Rs.2,23,500/- as compensation for the death of one U. Venkanna, by the order and decree, dated 17-06-2005 in O.P. No.76 of 2004 (Old O.P. No.164 of 2002) passed by the learned Chairman, Motor Accident Claims Tribunal – cum - II Additional District Judge, Nalgonda at Suryapet (for short 'the Tribunal'), on the ground that the deceased, who was the owner of tractor-cum-trailer, involved in the accident, cannot be construed as a third party by becoming driver or passenger of his own vehicle and, therefore, sought to set aside the said order and decree.

2. The appellant herein is the sole respondent in O.P. before the Tribunal, while respondent Nos.1 to 6 are the petitioners.

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

4. The facts, in brief, are that Uppala Venkanna owned
a tractor and trailer bearing registration Nos.AP 27A 6942 and 6943, respectively. On 08-07-2001 at about 3.00 p.m. while he was levelling the fields with the said tractor to cultivate the land, unfortunately, it turned upside down and he fell down, and the tractor's engine had also fallen on him. On seeing the same, neighbours rushed to the spot and removed him from under the tractor's engine. Since he sustained injuries on vital parts, he died instantly. The petitioners being wife, minor children and parents of deceased - Uppala Venkanna, claiming that he was earning Rs.4,000/- per month on an average; contributing the entire amount for maintenance of the family; they lost love and affection and dependency, sought a sum of Rs.3,00,000/- as compensation under Section 166 read with 140 of the Motor Vehicles Act, 1988, (for short 'the Act').

5. Sole respondent - Insurance Company filed counter raising various pleas.

6. Based on the pleadings, the Tribunal framed the following four issues in the direction of fixing liability and compensation, to which, the petitioners entitled.

> " 1. Whether the accident was due to the rash and negligent driving by the driver of Tractor and Trailer i.e., deceased tractor

> bearing No.AP-27-A-6942 and 6943?
>
> 2. Whether the petition is bad for non-joinder of necessary parties?
>
> 3. Whether the petitioners are entitled to any compensation, if so, to what amount?
>
> 4. To what relief?"

7. During inquiry before the Tribunal, petitioner No.1 examined herself as PW.1 and Exs.A-1 to A-6 were marked to substantiate their claim. On behalf of the respondent, Assistant Administrative Officer from its local branch was examined as RW.1, besides marking a copy of insurance policy as Ex.B-1.

8. The Tribunal recorded a finding on issue No.1 that the deceased died under the tractor and trailer while levelling the fields as he fell down and the engine had also fallen on him; on issue No.2, the plea taken by the Insurance Company that the claim is bad for non-joinder of the deceased as necessary party was rejected holding that making the deceased as party - respondent does not arise and answered the said issue accordingly. On issue No.3, taking the age of the deceased as 28 years, applying multiplier '18', arrived at Rs.3,06,000/- and having deducted 1/3rd there-from towards personal expenses of the deceased, worked out the loss of dependency at Rs.2,04,000/-. Besides the same, the Tribunal granted a sum of Rs.15,000/- towards loss of

consortium, Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate and, thus, a total sum of Rs.2,23,500/- was granted as compensation as against the claim of Rs.3,00,000/- with interest at 9% per annum thereon from the date of petition till deposit.

9. It is the aforesaid order which is under challenge in the instant appeal preferred by the respondent mainly on the ground that the contract of indemnity between the deceased and the insurer under Ex.B-1 was to indemnify the owner against the risk of third parties, and the owner can never be treated as third party when he was driving the tractor himself and, therefore, the policy does not cover the risk of the deceased, but, the Tribunal, somehow, went wrong in recording
a finding as such. It is also stated that the Tribunal ought not to have applied multiplier '18' as the second schedule to Section 163-A of the Act is not applicable in respect of claims laid under Section 166 of the Act, in view of the decision of this Court in **United India Insurance Company Limited v. Mokkala Chandramma and others**[1] and appropriate multiplier is '17' and, therefore, sought to set aside the order and decree passed by the Tribunal.

10. Heard Sri E. Sambasiva Pratap, learned standing counsel for the appellant - respondent, and Sri

Jayanthi S.C. Sekhar, learned counsel for the respondents - petitioners

11. Perused the order and evidence on record, both, oral and documentary, let in by the parties.

12. The manner in which the accident had occurred resulting in the death of the deceased is not in dispute. The only controversy is, whether or not the policy under Ex.B-1 issued by the insurer covers the risk of the insured when insured personally drives his vehicle?

13. The Tribunal placing reliance on the decision rendered by

a Single Judge of this Court in **New India Assurance Company Limited v. Nagalla Laxmi and another**[2], on which reliance was placed by the learned counsel for the petitioners, and also the decision in **Minu B. Mehta and another v. Balkrishna Ramchandra Nayan and another**[3] rendered by the Hon'ble Apex Court, has granted the aforesaid compensation.

14. The learned counsel for the appellant placed reliance on the decision of a Division Bench of Hon'ble Karnataka High Court in **Smt. M. Akkavva v. New India Assurance Company, Poona and others**[4] in the context of deciding the insurer's liability when death or

injury to owner of the vehicle – insured occurred, held that the insurer is not liable to pay compensation to either owner or his representative or agent. In **Kaliathal v. New India Assurance Company Limited**[5] rendered by a Division Bench of Hon'ble Madras High Court, on which reliance has been placed by the learned standing counsel for the Insurance Company; it was held that the insurance company is not liable to pay compensation when owner of the insured vehicle died in an accident. In **Usha Baghel v. United India Insurance Company Limited**[6], relied on by the learned counsel for insurance company, while answering the reference by a Full Bench of Hon'ble Madhya Pradesh High Court, held that merely by a clause in the policy enabling the owner of the vehicle to drive the vehicle, risk of the owner/insured was not covered by the policy of the insurance unless additional premium was paid so as to cover the risk of the owner/owner driving the vehicle, and thereby held that the claimants were disentitled to claim compensation for death of the owner or the injured from insurance company. In **New India Assurance Company Limited v. Dongre Sanjeev**[7] rendered by a Single Judge of this Court in the context of determining the liability where owner-cum-driver sustained injuries, held that insurance company is not liable to pay compensation when policy is an ‘Act Policy’, specifically covering the risk of third parties only.

15. The learned counsel for the respondents - petitioners placed reliance on a decision of the Hon’ble Single Judge of this Court in **National Insurance Co.Ltd., rep.by its Divisional Manager, Vijayawada v. Veldi Chandra Sekhar and another**[8]. In the said decision, this Court finding that Insurance Policy therein showing a premium of Rs.60/- was paid towards employees, held that owner of the vehicle can be covered under third party risk by paying special premium towards the same and, thus, held that the Insurance Company is liable to pay compensation.

16. The learned counsel for the appellant also placed reliance on the decisions of the Hon’ble Supreme Court in **Dhanraj v. New India Assurance Co.Ltd. and another** and **New India Assurance Co.Ltd., v. Meerabai and others**[9]. While adjudicating upon the controversy where statutory liability if extends to owner of vehicle, the Hon’ble Supreme Court in the former decision held that Insurance Policy under Section 147 of the Act, which complies with ‘the requirements of Chapter XI of the 1988 Act, such an insurance policy does not require an

insurance company to assume risk of death or bodily injury to the owner of the vehicle, and such an insurance policy is only to indemnify the insured against liabilities incurred towards a third person or in respect of damages to property. In **Meerabai's Case** (Supra 9), the Hon'ble Supreme Court having found that the policy does not show that the particular policy covered any risk of injury to the owner himself and the words 'paid driver and/or conductor' contained in schedule to the policy did not cover owner driving his own vehicle. In the instant case, the policy marked as Ex.B-1 would clearly show the words 'Paid Driver/Conductor/Workmen No.1' under the vertical column No.3 and the amount of 'Rs.15/-' having paid to cover their risk. Thus, it is clear that the deceased herein, who is the owner of the tractor-cum-trailer, whose death occurred while he was driving the tractor as it turned up side down, he fell down from the tractor, cannot be brought within the fold of words 'Paid Driver/Conductor/Workmen No.1' as held by the Hon'ble Supreme Court in **Meerabai's Case** (Supra 9), and also in view of the fact that Courts in the aforesaid decisions, on which the learned counsel for the appellant placed reliance succinctly held that the Insurance Company is not liable to pay compensation, where owner-cum-driver when himself drives the vehicle, either suffers injuries or death when the claim is laid by his legal representatives.

Therefore, there is merit in the submission of the learned counsel for the appellant and, accordingly, the instant appeal deserves to be allowed

17. In the result, the appeal is allowed setting aside the order and decree, dated 17-06-2005, in O.P. No.76 of 2004 (Old O.P. No.164 of 2002), passed by the Tribunal to the extent of liability fastened on the appellant - Insurance Company, which is respondent in the O.P., however, confirming the order in all other respects. The Insurance Company is at liberty to recover the amount, if any, deposited, from the estate of the deceased in case it so chooses. There shall be no order as to costs.

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

**A. SHANKAR NARAYANA J.**

**March 28, 2016.**
Mgr

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[1][1]. 2002 (2) ALT 700 (DB)
[2]. 2004 (1) ALD (NOC) 34
[3]. 1997 ACJ 118
[4]. AIR 1988 Karnataka 238
[5]. 2004 ACJ 51
[6]. 2008 ACJ 1697
[7]. 2012 (6) ALD 613
[8]. 2010 (5) ALT 716
[9]. (2006) 9 SCC 174