HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.456 of 2009

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by respondent No.2 – National Insurance Company Limited (for brevity "the insurer"), challenging the judgment and decree dated 26.11.2002 passed in O.P.No.30 of 1997 by the Chairman, Motor Accidents Claims Tribunal (I Additional District Judge), Prakasam District at Ongole (for brevity "the Tribunal"), whereby and whereunder a compensation of Rs.79,000/- was granted with interest at 9% per annum to the respondent Nos.1 to 5 herein, who are petitioners/claimants in the said O.P., on the main ground that the law laid down by the Hon'ble Apex Court in NEW INDIA ASSURANCE COMPANY LIMITED V. ASHA RANI AND OTHERS[1] governs the field and the award and decree run contra thereto.

2. Appellant/insurer is the 2nd respondent, respondent Nos.1 to 5 are the petitioners/claimants, and respondent No.6, who is the owner of the offending Tipper bearing No.AP 27T 6208, is respondent No.2 in O.P.No.30 of 1997. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.30 of 1997 before the Tribunal.

3. The fact situation occurring in this case, which led to the death of the deceased – Gowdaperu Kotaiah @ Budda Kotaiah, husband of petitioner No.1 and father of petitioner Nos.2 to 5, is not disputed by the insurer. As against the claim of Rs.1,00,000/- laid for the death of the deceased – Gowdaperu Kotaiah, the

Tribunal granted a compensation of Rs.79,000/- by examining petitioner No.1 as P.W.1 and marking Exs.A-1 to A-5 on behalf of the petitioners; and by examining R.W.1 and marking Ex.B-1 – copy of Insurance Policy, on behalf of the insurer.

4. The Tribunal, having framed 3 issues, on appraisal of evidence, held issue No.1 in favour of the petitioners. On issue No.2, worked out the loss of dependency at Rs.79,000/- with interest at 9% per annum from the date of petition till realization and apportioned the same towards the respective shares of the petitioners. Challenging the same, the present appeal is preferred by the insurer.

5. Heard learned counsel for the parties and perused the material available on record.

6. The only point that requires consideration in this appeal is, whether the judgment and decree dated 26.11.2002 can be affirmed or requires modification in view of the pronouncements of the Hon'ble Apex Court subsequent to the judgment rendered in NEW INDIA ASSURANCE COMPANY vs. SATPAL SINGH AND OTHERS[2].

7. The judgment and decree under challenge was rendered by the Tribunal on 26.11.2002. The decision rendered by the Hon'ble Apex Court in ASHA RANI's case (1 supra), which was relied upon by the learned Standing Counsel for the appellant/insurer, was rendered on 03.12.2002, by which, the Hon'ble Apex Court over-ruled the decision in SATPAL SINGH's case (2 supra).

8. In NATIONAL INSURANCE COMPANY LIMITED v. BALJIT

KAUR AND OTHERS[3], which was rendered on 06.01.2004, the Hon'ble Apex Court, in para-21 of the said judgment, clarified that the decision rendered in ASHA RANI's case (1 supra) would have prospective effect for payment of compensation.

9. It would be appropriate to extract para-21 of the decision in BALJIT KAUR's case (3 supra), which is thus:

> "21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be sub- served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the tribunal in such a proceeding."

10. Nothing more is required to probe into, except following the law laid down by the Hon'ble Apex Court in BALJIT KAUR's case (3 supra), which means to give a direction to the appellant/insurer to initially deposit the amount of compensation and recover the

same from the owner of the vehicle i.e., 6^{th} respondent herein. So far as the rate of interest awarded by the Tribunal is concerned, the same is reduced from 9% to 7.5% per annum, in view of the decision of the Hon'ble Supreme Court in RAJESH AND OTHERS V. RAJBIR SINGH AND OTHERS[4].

11. The Civil Miscellaneous Appeal is allowed, modifying the judgment and decree dated 26.11.2002 passed by the Tribunal in O.P.No.30 of 1997 to the extent indicated above,. No order as to costs.

12. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

22.07.2016.
Msr

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M.A.C.M.A. No.456 of 2009

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[1] (2003) 2 SCC 223
[2] AIR 2000 SC 235
[3] (2004) 2 SCC 1
[4] 2013 ACJ 1403