THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1370 OF 2009

JUDGMENT:

The present appeal is preferred by respondent No.2 – National Insurance Company Limited in M.V.O.P.No.203 of 2002 on the file of Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Chittoor, aggrieved by the order and decree, dated 19.12.2006, passed in the said O.P., granting a sum of Rs.20,000/- with interest at 7.5% per annum for the injuries sustained by the petitioner in the said O.P., on the main ground that the petitioner was an unauthorised passenger, but not the owner of the goods and that the Tribunal went wrong in fastening liability on it, though, there was fundamental violation of the terms and conditions of the policy.

2. The appellant – National Insurance Company Limited is respondent No.2 in the O.P. before the Tribunal, while respondent No.1 is the petitioner and respondent No.2, owner of the offending vehicle, is respondent No.1.

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 would show that on 11.10.2001, the petitioner – Janga Krishna Reddy along with some others boarded a lorry bearing registration No.AP-16-W-5769

with Tomato baskets at his Village to sell the Tomatoes in Tirupati Market and when the said lorry reached Bhakrapet Ghat on Piler – Tirupati road, due to the rash and negligent driving of the driver of the lorry and as the driver could not control the speed, the lorry went off the road resulting in injuries to the petitioner and others. The petitioner, stating that he took treatment under the supervision of Dr. O. Lakshminarayana and Dr. Sudhakara Reddy and sustained 25% permanent disability, sought a sum of Rs.1,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the lorry, respectively.

5. Respondent No.1, owner of the lorry, remained *ex parte* before the Tribunal.

6. Respondent No.2 opposed the claim taking a specific plea that the petitioner was travelling as a passenger in the lorry in contravention of the terms and conditions of the policy and, therefore, no liability can be fastened on it, and thus, sought to dismiss the claim petition against it.

7. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed two issues.

8. During enquiry, petitioner, besides examining himself as PW.1 examined one Dr. Prabhakar and Dr. A.

Sudhakar Reddy as PWs.2 and 3 and marked Exs.A1 to A5 besides marking Ex.X1. On behalf of respondent No.2, RW.1 was examined and copy of policy was marked as Ex.B1.

9. The Tribunal, on appraisal of evidence on record, held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal, having referred to the conditions of the policy under Ex.B1, in paragraph No.22 of the order under challenge, while observing that if the petitioner travelled in the lorry as gratuitous passenger, he need not pay any amount for the goods and that 34 Tomato baskets were loaded in the lorry belonging to seven persons travelling in the lorry, who have paid Rs.10/- per basket, concluded that the petitioner travelled as owner of the goods and thus, held that respondent No.2 is also liable to pay compensation of Rs.20,000/- as determined by it.

10. Aggrieved by the said order, the present appeal is preferred by the Insurance Company mainly contending that other than the driver and cleaner, not even owner of the goods is permitted to travel as per terms of the policy and in view of the legal position laid down in **National Insurance Company Ltd. v. Bommithi Subbhayamma and others**[1], no liability can be fastened on it and, therefore, sought to set aside the liability fixed on it.

11. Heard Ms. J. Ramani, learned counsel for the

appellant and Sri D. Sesha Sayana Reddy, learned counsel for respondent No.1. Though, service was completed on respondent No.2, none appears for him.

12. The very observations made in paragraph No.22 of the order under challenge would reflect that not only the petitioner, but seven others also travelled in the said lorry along with the petitioner, and that fact is sufficient to show that the petitioner was not the owner of the goods by hiring the lorry from one particular point to the destination. In that view of the matter, petitioner cannot be construed as owner of the goods, more particularly, when viewed in the light of the law laid down by the Honourable Supreme Court in **New India Assurance Company Limited v. Asha Rani**[2], **M/s. National Insurance Company Limited v. Baljit Kaur and others**[3] **and Bommithi Subbayamma's case (supra 1)**.

13. Hence, the appeal is allowed setting aside the order and decree under challenge insofar as the Insurance Company is concerned. In all other respects, the order and decree under challenge are maintained.

14. Further, as could be seen from the proceeding sheet, this Court, by order, dated 07.09.2007, in M.A.CMA.MP.No.4875 of 2007, while recording that the Insurance Company has already deposited half of the amount awarded by the Tribunal, granted interim stay on

condition that the petitioner – claimant shall be entitled to withdraw the deposited amount without furnishing any security. In case, the deposited amount is already withdrawn by the petitioner, it is open to the Insurance Company to recover the same from the owner of the lorry – respondent No.1 in the O.P. The petitioner – claimant is also at liberty to recover the balance amount from the owner of the lorry.

15. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

August 02, 2016.

MD

---

[1] 2005 ACJ 721

[2] AIR 2003 SC 607

[3] 2004 (2) ALT 33 (SC)