

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.2281 AND 2404 OF 2009

COMMON JUDGMENT:

Both these appeals are preferred by the National Insurance Company Limited, represented by its Branch Manager, Adilabad, who is respondent No.2 in O.P. Nos.551 of 2004 and 550 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge (Fast Track Court), Adilabad (for short, 'the Tribunal'), assailing the orders dated 11.09.2007, whereby and whereunder, the Tribunal, though, recorded a definite finding that both the claimants are unauthorized passengers travelling in a tipper bearing registration No.AP 26T 7178 along with several others, rejecting their stand that they were labourers engaged on the said tipper in view of the evidence of R.W.1 and the contents of Ex.B.1, held that the insurer is not liable to pay the compensation, but given a direction to the insurer to pay compensation of Rs.27,000/- to the petitioners in each of the claim petitions with interest at 7.5% per annum and to recover the same from the owner of the crime vehicle.

2. The said direction is assailed by the insurer in the present appeals mainly contending that the Tribunal was not right in giving such a direction as both the petitioners were travelling as unauthorized passengers in a goods vehicle, which amounted to gross violation of terms and conditions of the insurance policy and, therefore, sought to set aside the same.

3. The appellants in both the appeals herein are arrayed as respondent No.2, while respondent No.1 in both the appeals are the petitioners and respondent No.2 in both the appeals, who is the owner of the accident vehicle, is respondent No.1 in the original petition before the Tribunal.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

5. Heard Sri A. Veeraswamy, learned Standing Counsel for the appellant-insurer in both the appeals. Though, notices were served on respondent Nos.1 and 2 herein, none appears for them.

6. Perused the order and the evidence on record. The very fact that the petitioners were travelling on a tipper, which is not a passengers vehicle, though, initially, they did not say that they were labourers working on the tipper, but got amended the petition and introduced the amendment to the effect that they were labourers working in the tipper, still, the finding recorded by the Tribunal in paragraph No.10, thus:

"As it is established that the petitioner is only an unauthorized passenger or gratuitous passenger in the said tipper, the petitioner cannot claim any compensation against this respondent. Because the respondent No.2 is not liable to pay any compensation for unauthorized passengers. However, Ex.B-1 is a comprehensive policy. The respondent No.1

being the owner of the vehicle is only responsible and liable to pay compensation in the present case."

cannot be faulted. But, somehow, again, the Tribunal referring to the ruling of the Hon'ble Supreme Court in LC ACR 2004(1) 321, directed the insurer to pay the compensation initially and recover the same from the owner of the vehicle.

7. When once, positive finding is recorded holding that the petitioner in both the claim petitions are unauthorized passengers, in view of the decisions of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**¹, **National Insurance Company Limited v. Bommithi Subbayamma**² and **National Insurance Company Limited v. Baljit Kaur and others**³, certainly, even initial liability to pay the compensation and recover the same ought not to have been ordered by the Tribunal. Therefore, the orders under challenge suffer from infirmity warranting interference.

8. Therefore, both the appeals are allowed setting aside the orders and decrees dated 11.09.2007, passed by the Tribunal insofar as fixing initial liability on the appellants herein is concerned. However, the orders in all other respects are maintained. There shall be no order as to costs.

¹ (2003) 2 SCC 223

² 2005 ACJ 721

³ 2004 ACJ 428 (SC)

9. It is seen that by the order dated 01.09.2008 in M.A.C.M.A. M.P. No.5494 of 2008 in M.A.C.M.A. No.2281 of 2009, interim stay was granted on condition of the petitioner depositing half of the amount awarded by the Tribunal with costs within a period of a six weeks from the date of receipt of a copy of this order and also by the order dated 29.08.2008 in M.A.C.M.A. M.P. No.5514 of 2008 in M.A.C.M.A. No.2404 of 2009, stay was granted since the entire compensation amount was deposited. In case, the amounts are withdrawn by the petitioners-claimants respectively, the appellant-insurer is directed to recover the same from the owner of the accident vehicle in both the claim petitions. If the amount is still lying to the credit of the original petitions, the appellant-insurer in both the claims is entitled to seek return of the same. The petitioners-claimants are at liberty to recover the compensation amounts from the owner of the vehicle, who is respondent No.1 in both the claims.

10. As a sequel thereto, miscellaneous applications, if any pending in these appeals, shall stand closed.

8th November, 2016

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A. SHANKAR NARAYANA, J