HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No. 2792 of 2005

ORDER :

The 2nd respondent-insurer among two respondents including the owner of the goods auto AP 31 U 4515 of the claim petition O.P.no.1440 of 2003 maintained by wife and unmarried daughter of the deceased by name Appa Rao aged about 50 years as per Ex.A-3 post mortem report, of the claim maintained under Section 166 of the Motor Vehicles Act for Rs.2,50,000/-, awarded by the Tribunal by Rs.2,40,400/- with interest at 7.5% p.a. vide award and decree dated 02.06.2005 impugning the legality and correctness on the ground of deceased was unauthorized passenger and even in the para No.11 categorical finding by the Tribunal of deceased was traveling in the goods auto as unauthorized passenger, went wrong in ordering pay & recovery by relying on the expression of ***National Insurance Company Limited VS. Baljit Kaur***[1] as if applicable, maintained the appeal with the contentions that the insurer could not have been fastened with liability for the deceased was unauthorized passenger of the goods auto, hence sought for allowing the appeal by setting aside the award of the Tribunal and by exonerating the insurer.

2) Whereas, it is the contention of the learned

counsel for the claimants/respondent Nos.1 and 2 for the 3rd respondent owner did not choose to contest, that the award of the Tribunal holds good and for this Court while sitting in the appeal, there is nothing to interfere, once the trial Court considers the expression of the Apex Court in ***Baljit Kaur*** supra in ordering pay and recovery.

3) Heard and perused the material on record.

4) The only dispute in the appeal lis to consider is whether the Tribunal having held that the deceased was an unauthorized passenger of the goods auto and policy not covered the risk by any separate contractual liability, is justified in ordering pay and recovery following the expression of ***Baljit Kaur*** supra.

5) The decision of ***National Insurance Company V. Satpal Singh***[2] of the apex Court in fixing liability on the insurer was explained referring to provisions of the amended M.V.Act, 1994 by the Three Judge bench of the Apex Court in ***New India Assurance Company Limited V. Asha Rani***[3]. What was held in ***Asha Rani*** supra is unless there is contractual liability covering the risk, act policy does not cover the risk of unauthorized passengers in a goods vehicle. What was subsequently laid down in ***Baljit Kaur*** supra is that the expression of ***Asha Rani*** supra is prospective in operation and thereby those awards which were passed relying on ***Satpal Singh*** supra

prior to the date of expression in ***Asha Rani,*** fixing liability on the insurer also are modified to make only liable to the extent of the insurer to pay and recover. In the case on hand, the accident was dated 05.05.2001. The claim petition filed was on 29.09.2003. There was no award passed following ***Satpal Singh*** supra muchless prior to the date of the expression in ***Asha Rani*** supra to apply the principle laid down in ***Baljit Kaur*** supra to order pay and recover.

6) Having regard to the above, the finding of the Tribunal of the Insurer can be made liable to pay to claimants and then to recover from insured-vehicle owner under the mistaken impression as if the principle laid down in ***Baljit kaur*** supra applies to the facts on hand is liable to be set aside. In fact, in ***United India Insurance Company Ltd V. Lakshmamma***[4] though a case under dishonour of cheque issued for the policy amount, the principle laid down is where the insurer cannot be made liable and any amount is already deposited and withdrawn by the claimants it cannot be recovered by the insurer from the claimants but for against owner of the vehicle who is liable to pay.

7) Having regard to the above, the appeal is partly allowed by setting aside the award of the Tribunal to the extent of fixing liability on the insurer to pay and recover from the insured; however so far as what is the amount

deposited by the insurer concerned, since award of the tribunal itself already permitted to withdraw, there is nothing before this Court as to it is withdrawn even for what is deposited for the insurer to recover from the owner of the vehicle, it is made clear that in the event of withdrawal by the claimants of what is deposited the insurer has to recover from the owner (insured) of the vehicle and not from the claimants & otherwise the insurer can claim back the deposited amount. There shall be no order as to costs.

8) Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

03.06.2016
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[1] (2004)2 SCC-1
[2] 2001(1) ACJ 1
[3] 2002(8) Supreme 594
[4] (2012)5 SCC 231