HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1221 OF 2005

JUDGMENT:

Aggrieved by the order and decree, dated 30.12.2004, in
O.P. No.86 of 2001 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, Madanapalle, insurer preferred the instant Civil Miscellaneous Appeal questioning the liability fastened on it to pay compensation of Rs.2,04,000/- as against the claim of Rs.2,50,000/- laid under Section 166(1) of the Motor Vehicles Act, 1988.

2 . The appellant herein viz., Oriental Insurance Company Limited, Chittoor Branch, is respondent No.2 in the O.P. before the Tribunal, while respondent Nos.1 to 3, who are wife and children, respectively, of B. Sanjeevaraju, who died in the accident, are petitioners and respondent No.4, who is owner of the tractor bearing No.AP-04-T-3054 that involved in the accident, is respondent No.2.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal and
B. Sanjeevaraju, who died in the accident, as ‘deceased’.

4 The facts, in brief are that on 15-08-2000 at about 1-30 p.m., one Sanjeevaraju fell down from the tractor bearing No.AP-04-T-3054 and came underneath it while it was operated in the agricultural field of one G. chinnappa of Kappale village on account of rash and negligent driving of its driver. Claiming that the deceased was 23 years old at the relevant time, getting an income of Rs.75,000/- per annum from agriculture, petitioners sought a sum of Rs.2,50,000/- towards compensation with interest at 18% per annum against the respondents.

5. Respondent No.1, owner of the tractor that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer, filed counter resisting the claim of the petitioners taking a specific plea that the deceased was not supposed to sit on the tractor and, thus, there was violation of terms and conditions of the policy, and, therefore, sought to dismiss the claim petition against it.

7. Based on the pleadings, the Tribunal framed the following three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

"1. Whether the accident occurred due

to the rash and negligent driving of the offending vehicle tractor Ap-04-T-3054 involved in the accident and whether it resulted in death of the deceased?

2. Whether the petitioner are entitled for compensation and if so payable by whom and to what extent?

3. To what relief?”

8. During enquiry, petitioner No.1, wife of the deceased, examined herself as PW.1 besides examining one G. Sreenivasulu, an eyewitness to the accident, as PW.2 and marked Exs.A-1 to A-4.
On behalf of the insurer, Assistant Administrative Officer of the branch office concerned was examined as RW.1 and marked a copy of the insurance policy as Ex.B-1.

9. On issue No.1, the Tribunal has held that death of the deceased was only due to rash and negligent driving of the driver of the tractor and, accordingly, found the issue in favour of the petitioners. On issue No.2, while determining compensation, taking the age of the deceased as 23 years, his annual income at Rs.15,000/- and after deducting 1/3rd therefrom towards his personal expenses, taking Rs.10,000/- towards his contribution to his family, by applying multiplier ‘18.45’, arrived at Rs.1,84,500/- towards loss of dependency apart from Rs.10,000/- towards loss of consortium and Rs.9,500/-

towards loss of estate and, thus, awarded a total sum of Rs.2,04,000/- towards compensation with interest at 9% per annum apportioning the same between the petitioners.

10. Concerning terms and conditions of the insurance policy, having analysed the documentary evidence under Ex.B-1 insurance policy and placing reliance on the decision of the Hon'ble Supreme Court in **National Insurance Company Limited v. Swaran Singh and others** (2004 ACJ 1), the Tribunal held that the petitioners are entitled to compensation of Rs.2,04,000/-, granted liberty to the insurer to recover the same from the insured by filing execution petition.

11. It is the aforesaid order, which is under challenge in the instant appeal preferred by the insurer contending in the grounds of appeal that the Tribunal has sidelined the fact that the passengers are not allowed to travel on the tractor and that the tractor cannot carry any load, as such, even the direction of the Tribunal to it to pay compensation initially and recover the same from the insured without examining the relevant aspect as to whether there was any coverage at all or not in respect of the one (deceased) who was sitting on the tractor, sought to set aside the liability fastened on it.

12. Heard Sri Chindam Anjaneyulu, learned

standing counsel for the insurer (appellant), and Sri Md. Saleem, learned counsel for the petitioners.

13. Despite service of notice, none appears for the insured, owner of the tractor.

14. Learned standing counsel for the insurer (respondent No.2) would submit that in view of the decisions of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani**[1] **National Insurance Company Limited v. Baljit Kaur and others**[2] and **National Insurance Company Ltd. v. Bommithi Subbhayamma and others**[3]**,** even the direction of the Tribunal to the insurer to initially deposit the amount and recover the same from the insured is unsustainable.

15. Perused the impugned order and the evidence available on record.

16. Ex.B-1 insurance policy would show that it is an Act policy. It shows that a sum of Rs.15/- towards premium was paid covering the liability for the paid driver/workman No.1 and it was issued for the tractor alone.

17. Thus, Ex.B-1 makes it abundantly clear that except the driver, no other can sit or travel on the tractor.

Therefore, the deceased was not authorised to sit or travel on the tractor since the driver was already driving it. Thus, it accounts for fundamental violation of terms and conditions of Ex.B-1, insurance policy.

In that view of the matter, the direction given by the Tribunal to initially pay compensation determined by it and recover the same from the insured by filing execution petition cannot be sustained for the reason that the order under challenge was rendered on 30-12-2004 which was subsequent to the pronouncements of the Hon'ble Supreme Court in **Asha Rani** and **Baljit Kaur's Cases** (Supra 1 and 2)**.** Hence, the order and decree under challenge are liable to be set aside so far as the insurer is concerned.

18. Accordingly, the Civil Miscellaneous Appeal is allowed and the order and decree under challenge are set aside in respect of the insurer (appellant - respondent No.2) is concerned confirming the same in all other respects.

19. This Court by the order, dated 06.01.2006, made the interim stay granted on 29.06.2005 as absolute subject to condition of insurer depositing half of the amount awarded by the Tribunal towards compensation within a period of six (6) weeks from that day, and, on such, deposit, the petitioners were permitted to withdraw the same without furnishing any security. In that view of

the matter, the insurer is directed to recover the amount, if any, deposited by it into the Court from the insured, owner of the tractor involved in the accident, and that the petitioners are at liberty to recover the balance amount, if any, from the insured. 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

February 29, 2016.
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[1] **(2003) 2 SCC 223**
[2] **2004 ACJ 428 (SC)**
[3] **2005 ACJ 721 (SC)**