HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1726 OF 2005

JUDGMENT:

The instant appeal is preferred by the United India Insurance Company Limited, Eluru, aggrieved by the order and decree, dated 09.04.2003 in O.P. No.405 of 2000 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, West Godavari District, Eluru, whereby and whereunder, a sum of 2,00,000/- is granted towards compensation for the death of an unauthorised passenger / coolie, and, as there is dispute in that regard between the parties, requesting to set aside the same on the ground that the Tribunal went wrong in assuming that the deceased was covered by the premium paid by the owner of the vehicle involved in the accident.

2. Respondent Nos.1 to 3 herein, who are wife, daughter and father, respectively, of Narasimha Murthy, (who died in the accident), are petitioners in the O.P. before the Tribunal, while respondent Nos.4 and 5 and, who are driver and owner of the lorry bearing No.AP-37-U-7758 that involved in the accident, are respondent Nos.1 and 2, while the appellant, who is insurer of the that lorry, is respondent No.3.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4. The facts would show that on 29.02.2000 at about 11.30 a.m., while one Narasimha Murthy, aged 39 years, working as a Fish-Tank Watchman, earning Rs.3,000/- per month, boarded a lorry bearing No.AP-37-U-7758 along with others and sat on the cabin, and at about 1.00 p.m., while driver of the lorry drove it in a rash and negligent manner, he lost control over the lorry, and hit a stationed lorry bearing No.AP-16-W-9056, due to which the said Narasimha Murthy sustained grievous injuries and succumbed to the injuries while taking treatment on 18.03.2000. The petitioners, being legal heirs of Narasimha Murthy (hereinafter referred to as 'deceased') filed the instant claim petition seeking compensation of Rs.2,00,000/- under Section 166 of the Motor Vehicle Act, 1988 (for short 'the Act') read with Rule 455 of the A.P. Motor Vehicle Rules, 1989.

5. Respondent Nos.1 and 2, who are driver and owner, respectively, of the lorry involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.3, appellant herein - insurer took a specific plea as to violation of terms and conditions of the insurance policy stating that the deceased was an

unauthorised passenger and ought not to have boarded the lorry.

7. The Tribunal, based on the pleadings, 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 rash and negligent driving of the lorry bearing No.AP.37-U-7758 driven by the 1st respondent ?
>
> 2. Whether the petitioners are entitled to claim any compensation ? If so, to what amount and from which of the respondents ?
>
> 3. To what relief the petitioners are entitled ?"

8. During enquiry, petitioner No.1, who is wife of the deceased, examined herself as PW.1 and marked Exs.A-1 to A-3 on behalf of the petitioners; and on behalf of the insurer, Branch Manager concerned was examined as RW.1 and marked insurance policy of the lorry involved in the accident as Ex.B-1.

9. On issue No.1, the Tribunal recorded a finding in favour of the petitioners. On issue No.2, in paragraph No.11, while dealing with the contention of the insurer as to its liability on the question that whether the deceased

was travelling as a gratuitous passenger, somehow, projected as if RW.1 has made an admission that, premium was paid even to the non-fair paid passengers, and thereby granted Rs.2,00,000/- towards compensation with interest at 12% per annum.

10. It is the aforesaid order which is under challenge in the instant appeal on the ground that the Tribunal went wrong in following the law laid down by the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani**[1] and even in recording a finding that the amount of Rs.135/- was paid towards premium covers the risk of the deceased.

11. Heard Sri Vutla Srinivasa Rao, learned counsel for the insurer - appellant, and Sri Nimmagadda Satyanarayana, learned counsel for the petitioners.

12. Respondent No.1, who is driver of the lorry, is shown as not a necessary party to this appeal.

13. Though, notice on the insured - respondent No.2 returned un-served, the very fact that it was sent to the address mentioned in the cause title of the O.P. would suffice to hold that there is no defect in serving the notice on him. Even otherwise, he remained *ex parte* before the Tribunal.

14. Though, learned counsel for the petitioners supported the finding recorded by the Tribunal, the fact-situation projected by the petitioners themselves would show that the deceased boarded the lorry involved in the accident as a passenger, in fact, unauthorised passenger and now, he cannot be termed as a 'coolie' on the said lorry. Nothing more is required to probe further as the documentary evidence is also to the effect that the deceased boarded the lorry and travelled as an unauthorised passenger in the said lorry at the relevant time. Hence, the law laid down by the Hon'ble Supreme Court in **Asha Rani's Case** (Supra 1), **National Insurance Company Limited v. Baljit Kaur and others**[2], and **National Insurance Company Ltd. v. Bommithi Subbhayamma and others**[3] squarely applies and, therefore, the finding of the Tribunal fastening liability on the insurer is liable to be set aside.

15. As seen from the proceeding sheet, this Court while granting interim stay on 03.04.2006, directed to deposit half of the amount awarded by the Tribunal and the said direction was complied with by the insurer and even the claimants were permitted to withdraw 1/3rd of the same, without furnishing any security. In case the petitioners have withdrawn 1/3rd of the compensation deposited by the insurer, the insurer is at liberty to recover

the same from the insured. So far as the balance amount is concerned, the petitioners are at liberty to recover the same from the insured.

15. Accordingly, the Civil Miscellaneous Appeal is allowed setting aside the liability fastened by the Tribunal on the insurer, however, maintaining the same in all other respects including the liability of the owner of the lorry. There shall be no order as to costs.

16. As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

June 23, 2016.
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1. **(2003) 2 SCC 223**

[2] **2004 ACJ 428 (SC)**
[3] **2005 ACJ 721 (SC)**