

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1813 OF 2005

JUDGMENT:

The instant appeal is preferred by respondent No.2 - National Insurance Company Limited in O.P.No.727 of 2001 on the file of Chairman, Motor Vehicles Accidents Claims Tribunal-cum-IV Additional District Judge (FTC), Tanuku (for brevity "the Tribunal"), assailing the judgment and decree, dated 28.04.2005, rendered in the aforesaid O.P., whereby and whereunder, a sum of Rs.1,50,000/- was awarded as compensation with interest at 9% per annum, as per the claim laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), read with Rule 455 of the Motor Vehicles Rules, for the death of the son of respondent No.1 - petitioner, by name Sri Tatarao, in a road accident, contending that the said Tatarao was travelling in a goods carriage vehicle at the relevant time as an unauthorized passenger and, therefore, no liability can be fastened on the Insurance Company.

2. The appellant – Insurance Company is respondent No.2, whereas respondent Nos.1 and 3, who are the mother and father of the said Tatarao, are petitioner and respondent No.3, and respondent No.2, who is the owner of the lorry, is respondent No.1 in the O.P. before the Tribunal.

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, in brief, are that, on 31.07.2001 at about 10:30 PM, the said Tatarao loaded Red Gram in a lorry bearing No.AP-16-X- 8296 at Kothagudem and proceeded to Tanuku and when the lorry reached near Pothavaram on 01.08.2001 at about 7:00 AM, as the driver of the lorry driven it in a rash and negligent manner at high speed and since he was unable to control the vehicle, it turned upside down, due to which, the said Tatarao fell down on the left side of the road margin, resulting in injuries to him. He was admitted in Government Headquarters Hospital, Eluru, where he succumbed to the injuries. Hence, the claim was laid by the mother of the deceased-Tatarao against respondent Nos.1 and 2, who are the owner and insurer of the lorry, respectively, and also against respondent No.3, who is the father of the deceased.

5. Respondent Nos.1 and 3 remained *ex parte* before the Tribunal and respondent No.2 alone has contested the claim, raising various pleas, including the plea that there has been violation of the terms and conditions of the policy, since the deceased was travelling in a goods vehicle as an unauthorized passenger and, therefore, sought to dismiss the claim petition against it.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the following issues as well as additional issue were framed:

- “1. Whether the accident had occurred due to rash and negligent driving of the lorry bearing No.AP 16 X 8296 driven by its driver who died in accident as a result of which the lorry turned turtle and the deceased who travelling in the lorry died?
2. Whether the petitioner is entitled to claim any compensation? If so to what amount and from which of the respondents?
3. To what relief?
4. Addl. Issue: Whether the deceased Kodi Tatarao is unauthorized passenger or not?”

7. The Tribunal, on appraisal of evidence on record, held issue Nos.1 and 2 in favour of the petitioner and taking the income of the deceased at Rs.1,500/- per month, by deducting 1/3rd therefrom towards personal expenses of the deceased, worked out the contribution of the deceased to the family at Rs.1,000/- per month or Rs.12,000/- per annum and taking the age of the petitioner, mother of the deceased, as 41 years, since the deceased died in unmarried status, by applying multiplier ‘12.59’, determined the compensation at Rs.1,51,080 and also observed that the petitioner is entitled to Rs.5,000/- towards love and affection and Rs.2,500/- towards funeral expenses. However, the Tribunal, though, determined the compensation at Rs.1,58,580/-, restricted the same to

Rs.1,50,000/-, since the claim was made only for Rs.1,50,000/- and given suitable directions as regards apportionment of the same between the petitioner and respondent No.3 – father of the deceased.

8. On Issue No.4, which deals with whether the deceased Tatarao can be construed as an unauthorized passenger or not, the Tribunal, by elaborately dealing with the evidence on record, recorded a definite finding that the deceased Tatarao was travelling as an unauthorized passenger in a goods vehicle and placing reliance on the decision of the Hon'ble Supreme Court in **National Insurance Company Limited v. Baljit Kaur and others**^[1], directed the Insurance Company to initially deposit the amount and recover the same from the owner of the lorry by initiating execution proceedings without filing any separate suit, but, somehow, it has overlooked the principle laid down by the Honourable Apex Court in the said decision that the decision rendered in **New India Assurance Company Limited v. Asha Rani**^[2] is prospective in effect. That appears to be the reason, the Tribunal has given such a direction contrary to what was intended by the Honourable Apex Court in **Baljit Kaur's case (supra 1)**.

9. Challenging the aforesaid direction, respondent No.2 -National Insurance Company has preferred the

instant appeal, mainly contending in the grounds that the deceased was travelling in the lorry contrary to the provisions of the Act and there was contributory negligence on the part of the deceased and, therefore, sought to set aside the judgment and decree of the Tribunal, which casts liability on the Insurance Company initially to deposit the amount and recover the same from the owner of the lorry by filing execution petition.

10. Heard Sri N.S. Bhaskar Rao, learned counsel for the appellant, and Sri N. Nageswara Rao, learned counsel for respondent No.1. None appears for respondent No.3, despite service of notice. Appeal was dismissed against respondent No.2.

11. Learned counsel for respondent No.1 – petitioner would submit that the evidence recorded by the Tribunal and the order passed by the Tribunal directing the Insurance Company to initially deposit the amount and recover the same from the owner of the lorry cannot be set aside and in support of his submission, he has placed reliance on unreported judgments of this Court in M.A.CMA. Nos.1176, 1179 and 1217 of 2005, dated 03.11.2015, and C.M.A.No.2201 of 2002, dated 02.03.2007.

12. It is no doubt true that this Court in the aforesaid unreported judgments has held that the insurer was liable

to pay the compensation amount with liberty to recover the same from the insured by placing reliance on the decisions in **Baljit Kaur's case (supra 1)** and **Oriental Insurance Co. Ltd. v. Nanjappan**^[3], where the Honourable Supreme Court has reiterated the principle laid down in **Asha Rani's case (supra 2)** to the effect that in case where the deceased or injured is an unauthorised passenger travelling in a goods vehicle, no liability can be fastened on the Insurance Company, but in view of the ratio laid down by the Honourable Supreme Court in **Asha Rani's case (supra 2)**, **Baljit Kaur's case (supra 1)**, **National Insurance Company Ltd. v. Bommithi Subbhayamma and others**^[4] and **National Insurance Company Limited v. Kaushalaya Devi and others**^[5], certainly, the submission of the learned counsel for respondent No.1 cannot be accepted.

13. Hence, the appeal is allowed so far as setting aside the liability of the Insurance Company is concerned. However, the 1/3rd amount, out of the half of the compensation amount awarded by the Tribunal including interest and costs deposited by the Insurance Company, withdrawn by the respondent - claimants shall be recovered by the Insurance Company from the owner of the lorry. Rest of the amount to which the respondent – claimants are entitled to, they shall recover the same from

the owner of the lorry. Thus, the liability fastened on the Insurance Company is set aside. There shall be no order as to costs.

14. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

A. SHANKAR

NARAYANA, J

February 11, 2016.
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[\[1\]](#) 2004 ACJ 428 (SC)
[\[2\]](#) (2003) 2 SCC 223
[\[3\]](#) 2004 ACJ 721
[\[4\]](#) 2005 ACJ 721 (SC)
[\[5\]](#) (2008) 8 SCC 426 (DB)