

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.2603 OF 2005

JUDGMENT:

The 2nd respondent – M/s. National Insurance Company Limited in M.V.O.P. No.334 of 2001 preferred the instant appeal, aggrieved by the order and decree, dated 20-04-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Guntur, on the ground that the Tribunal overlooked the violation of terms and conditions of the policy and fastened liability on it.

2. The appellant herein, who is insurer of Jeep bearing registration No.AP 7W 1649, is the 2nd respondent while respondent Nos.1 to 4 are the petitioners and respondent No.5, who is owner of the jeep, is respondent No.1 in M.V.O.P. before the Tribunal.

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

4. The facts, in brief, are that on 16-12-2000 at about 9.30 a.m., one Dosapati Siddiah, aged 55 years, toddy tapper, was travelling in a Jeep from Dachepalli to Macherla and due to rash and negligent driving by its driver, the jeep moved away from the road, during which process, he received fatal injuries and died instantly. The petitioners being legal representatives of deceased as wife, children and mother, sought a total compensation of

Rs.1,40,000/- against respondent Nos.1 and 2, who are owner and insurer of the jeep, respectively.

5. Respondent No.1, owner of the jeep, remained *ex parte*.

6. Respondent No.2, its insurer, filed counter opposing the claim requiring the petitioners to prove that the driver of the accident vehicle was possessing valid and effective driving license at the time of accident, and that the vehicle was roadworthy to ply, and sought to exonerate it from liability.

7. From the record, it is clear that insurer has filed additional written statement though, it was not adverted to in the narration of events by the Tribunal. The Tribunal has framed the following three issues in order to adjudicate upon the issue between the parties.

“

1. Whether the deceased died in the accident due to the rash and negligent driving of the Jeep (Commander) No.AP 7W-1649 by its driver?
2. To what compensation amount the petitioners are entitled to and against whom?
3. To what Order? ”

8. During inquiry, the 1st petitioner, besides examining herself as PW.1, has examined PWs.2 and 3 and marked Exs.A-1 to A-6. Whereas, on behalf of respondent No.2, one of the officials from its local branch office was examined as RW.1 and certified copy of Insurance Policy and authorized copy of driving license were marked as Exs.B-1 and B-2.

9. The Tribunal having appreciated the evidence on record,

held issue No.1 in favour of the petitioners observing that due to rash and negligent driving of the driver of the jeep, the accident had occurred. On issue No.2, the Tribunal has determined the compensation at Rs.84,000/- towards loss of dependency and also awarded Rs.15,000/- towards loss of consortium and another Rs.15,000/- towards loss of estate and, thus, a total sum of Rs.1,14,000/- was awarded as compensation. On the question of liability, the Tribunal while agreeing with the learned counsel for the 2nd respondent – Insurance Company that twelve (12) persons were travelling overloading the vehicle, but however, held that non-examination of either the owner or the driver vitally affects that stand of the Insurance Company while observing that the first information report does not constitute substantive piece of evidence and thereby discarded that stand taken by the Insurance Company and, accordingly, held that both the respondents jointly and severally liable to pay compensation with interest at 9% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal fastened the liability without properly appreciating the circumstance that the jeep was overloaded and first information report contents are sufficient enough to prove the violation of terms and conditions of the policy on account of taking 12 passengers as against 9 passengers being permitted by the concerned authorities. Even with regard to rate of interest at 9% awarded by the Tribunal is also challenged.

11. Heard Sri T. Ramulu, learned Standing Counsel for the appellant – Insurance Company, and Sri N. Subba Rao, learned

counsel for respondent Nos.1 to 4 – Petitioners. Though notice served on respondent No.5, none appears.

12. Perused the order and the evidence on record, both, oral and documentary.

13. There is no dispute between the parties in regard to the manner in which the accident had occurred. Though, initially the instant appeal was preferred on the ground that the accident vehicle carried passengers more than the number of passengers permitted by the permit issued there-for, but, during the course of arguments, by placing reliance on the decision of the Hon'ble Supreme Court in **B.V. Nagaraju v. Oriental Insurance Co.Ltd.**^[1], the learned counsel for the appellant – Insurance Company fairly submits that though Ex.A-1, first information report, shows that twelve (12) passengers were travelling at the relevant time as against none (09) passengers, still, terms of the policy of insurance need not be construed strictly. In that view of the matter, when the decision rendered by the Hon'ble Supreme Court in

B.V. Nagaraju's Case (Supra 1) is applied, certainly, it cannot be said that the said violation would amount to fundamental violation so as to exclude liability of the insurance company. Whereas, the learned counsel for respondents – petitioners would contend that nothing is placed to show that over-loading contributed to the accident. That aspect does not require any deliberation on the issue in view of the submission made by the learned counsel for the appellant. Thus, keeping in view, the submission of the learned counsel for the Insurance Company, as referred to in the above. Thus, award of compensation of Rs.1,14,000/- and liability fixed on

respondent Nos.1 and 2, who are owner and insurer jointly and severally is concerned, the same is confirmed. However, with regard to the rate of interest granted by the Tribunal at 9% per annum, the same is reduced to 7.5% per annum in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[2].

14. In the result, the appeal is allowed in part reducing the rate of interest to 7.5% per annum on the amount awarded by the Tribunal from 9% per annum. Except to the said extent, in all respects, the order and decree, dated 20-04-2005, in M.V.O.P. No.334 of 2001, passed by the Tribunal, are confirmed. There shall be no order as to costs.

15. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

January 07, 2016.
Mgr

^[1]. 1996 ACJ 1178

^[2]. 2013 ACJ 1403