THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1894 OF 2005

JUDGMENT:

Respondent No.2 – United India Insurance Company Limited in O.P.No.12 of 2012 on the file of Chairman, Motor Accidents Claims Tribunal – cum – II Additional District Judge, Mahabubnagar, preferred the instant appeal aggrieved by the order and decree, dated 21.05.2005, passed in the said O.P., whereby and whereunder, the Tribunal has granted a sum of Rs.83,000/- as compensation for the death of one Chinna Narsappa.

2. The appellant – Insurance Company is respondent No.2, whereas respondent Nos.1 and 2, who are the wife and mother of the deceased Chinna Narsappa, respectively, are the petitioners and respondent No.3, owner of the offending vehicle, 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 would show that on 29.03.2000 at about 01:00 PM, while the said Chinna Narsappa was travelling

in a lorry bearing registration No.AP-21-U-7596 by taking groundnut from Damargidda to Narayanpet to sell the same in the market by paying loading charges to the driver of the lorry, which belongs to respondent No.1, and when the lorry reached Mattugadda bridge in the limits of Narayanpet, since the driver of the lorry drove it in a rash and negligent manner at high speed and could not control the speed, it turned upside down resulting in injuries to the persons travelling therein. The said Chinna Narsappa suffered serious injuries and was shifted to a hospital, where he succumbed to the injuries. The petitioners, being wife and mother of the deceased, laid claim for grant of Rs.1,00,000/- as compensation, under Section 166 of the Motor Vehicles Act, 1988.

5. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 opposed the claim by filing counter, specifically pleading that the deceased was travelling as an unauthorised passenger and thus, there was violation of the terms and conditions of the policy, and therefore, sought to dismiss the claim petition against it.

6. Based on the said pleadings, the Tribunal has framed three issues in order to determine the liability as well as the compensation to which the petitioners are entitled.

7. During enquiry, petitioner No.1 examined herself as PW.1 besides examining one Manikyappa as PW.2 and marked Exs.A1 to A3 to substantiate the claim laid. On behalf of respondent No.2, no evidence, either oral or documentary, was let in.

8. The Tribunal, having found issue No.1 in favour of the petitioners, on issue No.2, though agreed with the stand of the Insurance Company that there was no evidence to support that the deceased was transporting groundnut in the said lorry, still granted Rs.83,000/- as compensation directing respondent No.2 to initially pay the amount and recover the same from respondent No.1 by placing reliance on the decision of the Honourable Supreme Court in **National Insurance Company Limited v. Baljit Kaur and others**[1].

9. It is the aforesaid order which is under challenge in the instant appeal preferred by the insurer mainly contending that the Tribunal having recorded a finding that there was no evidence to show that the deceased was transporting groundnut in the lorry, still held that the insurer shall pay initially and recover the same from respondent No.1, which is wholly incorrect and therefore, sought to set aside the order and decree passed against it.

10. Heard Sri V. Sambasiva Rao, learned counsel for the appellant. Despite service of notice on respondent Nos.1 and 2, none appears. The appeal against respondent No.3 was dismissed for default on 04.01.2012.

11. Perused the order under challenge and the evidence on record.

12. The finding recorded by the Tribunal that there was no evidence to substantiate the stand of the petitioners that the deceased was transporting groundnut is based on appreciation of evidence as the contents of F.I.R. and charge sheet marked as Exs.A1 and A2 would positively establish the same. Despite making such a definite finding, still mulcting liability on the Insurance Company is wholly erroneous in view of the law laid down by the Honourable Supreme Court in **New India Assurance Company Limited v. Asha Rani**[2] **and Baljit Kaur's case** (supra 1). Since the order under challenge was rendered on 21.05.2005, nothing else is required to set aside the said order and decree fastening liability on the Insurance Company, when fundamental violation of the terms and conditions of the policy was committed by respondent No.1, owner of the lorry, who in

fact, ought to be directed for payment of compensation awarded by the Tribunal. In that view of the matter, the appeal is allowed setting aside the order and decree under challenge so far as the appellant – Insurance Company is concerned.

13. While admitting the instant appeal on 23.08.2005, this Court in C.M.P.No.3201 of 2005 directed the Insurance Company to deposit half of the compensation amount including interest and costs within a period of six weeks as a condition precedent to grant interim stay. In case, the said amount is withdrawn by the petitioners - claimants, it is open to the Insurance Company to recover the same from the owner of the lorry, who is respondent No.1 in the O.P. The petitioners are at liberty to recover the balance amount or the entire amount granted as compensation from respondent No.1. 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

April 28, 2016.
MD

[1] 2004 TAC 366

[2] (2003) 2 SCC 223