HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1485 OF 2005

JUDGMENT:

The 2nd respondent - M/s. United India Insurance Company Limited in O.P. No.491 of 2000, preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') questioning the order and decree, dated 20-02-2004, passed by the learned Chairman, Motor Accident Claims Tribunal - cum - II Additional District Judge, Nalgonda, whereby and where-under, an amount of Rs.1,50,000/- was granted as compensation for the death of one Kunchapu Srinu, whose legal heirs are the petitioners.

2. The appellant herein, who is insurer of lorry bearing registration No.AP 11T 2833, is respondent No.2 in O.P. before the Tribunal, while respondent Nos.1 to 3 are petitioners and respondent No.4 is owner of the said lorry.

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 relating to the deceased travelling in the lorry at the relevant time, and as a result of which, his

death occurred and other incidental facts are not in dispute. But, the disputed issue is, the learned counsel for the petitioners would submit that the deceased was travelling as a coolie/labourer and, thus, he was permitted to travel in the lorry at the relevant time. Whereas, the learned counsel for respondent No.2 - Insurance Company would contend that he was not a labourer and the very fact that the Tribunal given such a direction directing the insurance company initially to deposit and recover the compensation, and in the absence of any challenge to the same, would suffice to hold that the deceased was travelling as an unauthorized passenger in the said lorry.

5. Before the Tribunal, respondent No.1, who is owner of the lorry, remained *ex parte*

6. Respondent No.2 alone filed counter, who contested the case, taking a specific plea that the deceased was travelling as an unauthorized passenger in a goods vehicle.

7. The Tribunal having framed relevant issues and basing on the evidence of PW.1 - petitioner No.2 and Exs.A-1 to A-7, recorded a finding on issue No.1 in favour of the petitioners holding that the accident had occurred due to rash and negligent driving of the driver of the lorry.

On issue No.2, the Tribunal taken daily earnings of the deceased at Rs.50/- or Rs.1100/- per month considering 22 working days and the annual income at Rs.13,200/-, and having deducted 1/3rd there-from towards personal expenses of the deceased, arrived the annual contribution to the family at Rs.8,800/-, and applying multiplier '15' taking the age of PW.1 being mother of the deceased, who died in 'unmarried status', arrived at Rs.1,32,000/- towards loss of dependency. Besides the same, the Tribunal granted Rs.2,000/- towards funeral expenses; Rs.1,000/- towards transportation charges; Rs.5,000/- towards pain and suffering and Rs.10,000/- towards future loss of estate, making a total of Rs.1,50,000/- as compensation which is the amount claimed by the petitioners in their claim petition. The Tribunal also awarded interest at the rate of 9% per annum thereon from the date of petition till payment.

8. It is the aforesaid order which is challenged by respondent No.2 before this Court by filing the instant appeal. In the grounds of appeal, respondent No.2 - Insurer placing reliance on the pronouncements of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asharani and others**[1], requests to set aside the said order and decree as the judgment passed in **New India Assurance Company Ltd., v.**

Satpal Singh & others[2] was overruled and no more applicable.

9. Heard Sri E. Venugopal Reddy, learned counsel for the appellant - Insurance Company, and Sri P. Mehar Srinivasa Rao, learned counsel for respondent Nos.1 to 3. Notice sent to the address of respondent No.4 given in the cause title in OP, not yet returned and the same would suffice even to view that the service is effected, more so, respondent No.1 has already suffered a decree before the Tribunal.

10. Perused the order and material, both, oral and documentary. In fact, no probe is required as no appeal is preferred by respondent Nos.1 to 3 challenging the finding recorded by the Tribunal in giving such a direction to the insurer to deposit compensation initially and to recover the same from the owner. Thus, the inference drawn by the Tribunal that the deceased was travelling as an unauthorized passenger in a goods vehicle attains finality and, therefore, the order passed by the Tribunal would not sustain in view of the decisions of the Hon'ble Supreme Court in **Asha Rani's Case** (Supra 1), **Baljith Kaur's Case** (Supra 2), and **National Insurance Company Limited v. Chella Bharathamma & others**[3]**.** Therefore, the appeal has to be allowed.

11. The proceeding sheet would reveal that, while admitting the appeal a direction was given to deposit half of the compensation amount along with interest and proportionate costs after giving credit to the amount, if any, already deposited by the appellant, before the Tribunal. But, there is no order permitting the petitioners to withdraw the same. However, it appears that there was delay of 266 days in preferring the appeal which was condoned. In case, any amount is deposited in execution proceedings if at all instituted by the petitioners and withdrawn by them, the said amount may be recovered from the owner by the appellant - insurer herein. The petitioners are at liberty to recover the compensation amount with interest and costs from the owner of the vehicle, who is respondent No.4 herein and incidentally respondent No.1 in the OP.

12. Accordingly, the appeal is allowed setting aside the order and decree, dated 20-02-2004, passed by the Tribunal in O.P. No.491 of 2000 in so far as respondent No.2 - Insurance Company is concerned while maintaining the order and decree in all other respects. 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

June 17, 2016.
Mgr

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[1]. 2003 (1) ALD 18

[2]. 2000 (1) ALD 50 (SC)

[3]. (2004) 8 SCC 517