

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.2514 OF 2005

JUDGMENT:

Respondent No.2 – National Insurance Company Limited in O.P.No.99 of 2003 on the file of Motor Accidents Claims Tribunal – cum – II Additional District Judge, Madanapalle, preferred the instant appeal challenging the direction given in the order, dated 02.06.2005, in the said O.P. to the insurer to initially deposit the compensation amount awarded and recover the same from the owner of the offending vehicle on the ground that such a direction is unsustainable, in view of the decision of the Honourable Supreme Court in **National Insurance Company Ltd. v. Bommithi Subbhayamma and others**^[1].

2. The appellant – Insurance Company is respondent No.2, whereas respondent No.1 is the petitioner and respondent No.2, 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 09.10.2002 at about

07:30 PM, the petitioner was travelling along with his oil drums as owner of the goods in a truck bearing registration No.AP-03-U-3509, insured with respondent No.2, and when the truck reached 242/3 culvert stone of Yendapallivaripalle on Bakarapet – Piler main road, since the driver of the truck driven it in a rash and negligent manner, he lost control over the vehicle, which resulted in the vehicle turning upside down occasioning fracture to the right leg and left hand of the petitioner. Immediately, the petitioner was shifted to Government Hospital, Piler, for treatment. The police of Bakarapet Police Station registered a case in Crime No.52 of 2002, under Section 338 I.P.C., against the driver of the truck and later, it was numbered as C.C.No.459 of 2002 on the file of Judicial Magistrate of First Class, Piler. The petitioner, claiming that he was earning Rs.6,000/- per month by doing business in oil and that he has spent Rs.95,000/- towards medical expenses, sought a sum of Rs.2,00,000/- as compensation with interest at 12% per annum under Section 166 of the Motor Vehicles Act, 1988.

5. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 – Insurer opposed the claim by taking a specific plea that the petitioner was travelling unauthorisedly in a goods vehicle and thus, there has been violation of the terms and conditions of the policy

and, therefore, the Insurance Company is not liable to indemnify the owner of the truck for the wrong committed and 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 Tribunal has framed the following three issues.

- “1. Whether the accident occurred due to rash and negligent driving of the offending truck bearing No.AP-03-U-3509 involved resulting in injuries to the petitioner B. Chengaiah Setty?
2. Whether the petitioner is entitled for compensation? If so, by whom and to what amount?
3. To what relief?

7. During enquiry, petitioner besides examining himself as PW.1 examined one D. Prabhakara as PW.2 and Dr. Viswakiran Reddy as PW.3 and marked Exs.A1 to A7 to substantiate the claim laid. On behalf of respondent No.2, its local Branch Manager was examined as RW.1 and marked Ex.B1 – True copy of policy and Ex.X1 – Original case sheet relating to PW.1 issued by S.V.R.R.G.G. Hospital, Tirupati.

8. The Tribunal, having analysed the evidence on record, held issue No.1 in favour of the petitioner. On issue No.2, having regard to the nature of injuries sustained by the petitioner, the expenditure he had incurred for treatment and the pain he suffered, granted a sum of Rs.65,000/- as compensation with interest at 9%

per annum from the date of petition till the date of realisation. However, concerning the liability, the Tribunal, having found favour with the stand taken by the insurer that the petitioner was travelling unauthorisedly in a goods vehicle, however, keeping in view, the decision of the Honourable Apex Court in **National Insurance Company Limited v. Swaran Singh and others**^[2], directed the insurer to initially deposit the amount and recover the same from respondent No.1 by filing execution petition.

9. It is the aforesaid direction which is under challenge in the instant appeal preferred by the Insurance Company.

10. Heard Sri R. Venkat Rao, learned counsel for the appellant, and Sri R. Ramachandra Reddy, learned counsel for respondent No.1. The appeal was dismissed against respondent No.2 by order, dated 05.01.2012.

11. No further proof is required to examine the issue as to whether such a direction can be given or not, in view of the decisions of the Honourable Supreme Court in **New India Assurance Company Limited v. Asha Rani**^[3], **National Insurance Company Limited v. Baljit Kaur and others**^[4], **Bommithi Subbhayamma's case (supra 1)** and **National Insurance Company Limited v. Kaushalaya Devi and others**^[5]. In view of the fact that

the order under challenge was passed on 02.06.2005, which was subsequent to the decision in **Baljit Kaur's case (supra 4)**, such a direction is unsustainable and accordingly, the said direction is set aside allowing the instant appeal.

12. As seen from the proceeding sheet, this Court, by order, dated 27.09.2005, in M.A.CMA.MP.No.4168 of 2005, directed the insurer to deposit half of the compensation amount awarded by the Tribunal including interest and costs. In case, the amount was already deposited and withdrawn by the petitioner - claimant, the insurer is directed to proceed against the owner of the truck for recovery of the same. In case, the amount is not withdrawn and still, lying to the credit of the O.P., it is open for the insurer to make an application for return of the amount.

13. So far as the liability of the owner of truck is concerned, the same is maintained by confirming the order under challenge to that extent, including the amount of compensation awarded by the Tribunal. In case, half of the compensation amount deposited by the insurer was already withdrawn by the petitioner – claimant, he is at liberty to recover the rest of the half of the compensation amount from the owner of the truck – respondent No.1 in the O.P. 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

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