THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.1357 of 2009

JUDGMENT:

The present appeal is preferred by the New India Assurance Company Limited – respondent No.2 in O.P.No.273 of 2006 on the file of the Chairman, Motor Accidents Claim Tribunal-cum-District Judge at Nizamabad (for short, 'the Tribunal'), aggrieved by the order dated 01.04.2008 passed in the said O.P., wherein, while granting an amount of Rs.1,40,000/- as compensation for the death of one Manda Devaiah (deceased), respondent No.2 was directed to deposit the decretal amount initially and recover the same from owner of the accident vehicle in view of the violation of terms and conditions of the policy.

2. The appellant and respondent No.3 herein, who are the insurer and owner of the accident vehicle, are respondent Nos.2 & 1, respectively, while respondent Nos.1 & 2, who are the mother and younger brother of the deceased, were petitioner Nos.1 & 2, respectively, in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 28.02.2006 at about 1.00 a.m., one Manda Devaiah was travelling in a tractor bearing registration No.AP 15 V 2405, to which a trolley bearing registration No.AP 25 H

6028 was attached, as labourer of respondent No.1, who is owner of the tractor and trolley, having loaded sugarcane in the tractor proceeding from Muthyampet to Kamareddy Gayathri Sugar factory, and when it reached near Old Age Home at Ugravai village limits, since the driver of the tractor drove it in a rash and negligent manner, it fell in a ditch, due to which, the said Devaiah fell down and the wheels of the trolley ran over him, resulting head injuries and fractures all over his body and he, succumbing to injuries on the same day. The petitioners, claiming that the deceased was 25 years old earning Rs.10,000/- per month on agriculture and labour work and contributing the same to the family, sought a sum of Rs.6,00,000/- as compensation from respondent Nos.1 & 2, who are owner and insurer of the said tractor and trolley, respectively.

5. Respondent No.1, owner of the accident vehicle, remained *ex parte* before the Tribunal. Respondent No.2 – insurer opposed the claim taking a specific plea that the policy does not cover the risk of the deceased, since he was travelling in the tractor, which amounted to violation of terms and conditions of the policy and, therefore, sought to dismiss the claim petition against it.

6. Basing on the aforesaid pleadings, the Tribunal framed three issues.

7. During enquiry, on behalf of the petitioners, P.Ws.1 to 4 were examined and Exs.A1 to A8 were marked. On behalf of respondent

No.2 – Insurance Company, its official from local branch was examined as R.W.1 and the copy of insurance policy with conditions was marked as Ex.B1.

8. The Tribunal, having appraised the evidence on record, held issue No.1 in favour of the petitioners.

9. On issue No.2, the Tribunal, in paragraph 22 of the order, acceded to the stand of respondent No.2, that respondent No.1 has committed breach of terms and conditions of the policy by allowing the deceased to travel on the tractor, but, however, placing reliance on the decision of the Hon'ble Supreme Court in **National Insurance Company Limited v. Swaran Singh and others**[1], it opined that it is a case where respondent No.2 can be directed to satisfy the award in favour of the claimants and recover the same from owner in execution proceedings. The Tribunal then proceeded with determining the compensation taking the relevant factors into consideration and arrived at Rs.1,20,000/- towards future contribution of the deceased to the family or loss of dependency, Rs.15,000/- towards loss of love and affection for the loss of company of the deceased and Rs.5,000/- towards transportation charges and funeral expenses. Thus, awarded a total compensation of Rs.1,40,000/- with interest at 7.5% per annum.

10. The aforesaid order, more particularly, the direction given to respondent No.2 to initially satisfy the decretal amount and recover

[1] 2004 ACJ 1

the same from owner of the vehicle is under challenge in the instant appeal, mainly on the ground that the deceased was travelling on the bonnet of the tractor and the seating capacity of the tractor was only one intended for driver alone and the policy does not cover the risk of the persons travelling in the tractor and, therefore, sought to allow the appeal by setting aside the order and decree passed insofar as respondent No.2 is concerned.

11. Heard Sri C.Buchi Reddy, learned counsel for the appellant, Sri P.Radhive Reddy, learned counsel for respondent Nos.1 & 2, and Sri Ch.Janardhana Reddy, learned counsel for respondent No.3, owner of the tractor and trolley.

12. The controversy does not require much deliberation, in view of the fact that none of the respondents herein did challenge the direction given by the Tribunal. In other words, the finding recorded by the Tribunal that respondent No.1 committed breach of terms and conditions of the policy, attains finality. Therefore, what is required now to consider is whether such a direction given by the Tribunal is sustainable?

13. As already mentioned in the above, the Tribunal, in support of the direction given, placed reliance on the decision of the Hon'ble Supreme Court in **Swaran Singh**'s case (1 supra), but, somehow, went wrong in applying the law declared in the said decision, for the reason that the said decision is inapplicable to the fact-situation occurring in the

instant case. On the other hand, the law laid down by the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**[2] and **National Insurance Company Ltd., v. Baljit Kaur and others**[3] is applicable, in which case such a direction cannot at all be given, unless the order under challenge was rendered prior to rendering the decision in **Asha Rani**'s case (2 supra), since the law declared by the Hon'ble Supreme Court in **New India Assurance Company Ltd., v. Satpal Singh**[4] was holding the field then.

14. Accordingly, the appeal is allowed setting aside the order and decree under challenge insofar as the Insurance Company alone is concerned. In all other respects, the order and decree under challenge are maintained.

15. The learned counsel on either side would represent that the Insurance Company deposited the amount as per the order of this Court, dated 15.12.2008, in MACMAMP.No.8324 of 2008, whereby stay was granted subject to condition of the Insurance Company depositing half of the compensation amount as awarded by the Tribunal, including interest and costs, after duly giving credit to the amount, if any already deposited. It is further represented by learned counsel that subsequently, this Court, by order dated 01.05.2009 in MACMAMP.No.2502 of 2009, permitted the vacate petitioners to withdraw the amount already

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[2] (2003) 2 SCC 223
[3] 2004 ACJ 428 (SC)
[4] 2000 ACJ 1 (SC)

deposited without furnishing any security. In such a situation, in case, the deposited amount is already withdrawn by the petitioners, it is open to the Insurance Company to recover the same from the owner of the tractor – respondent No.1 in the O.P. The petitioners – claimants are also at liberty to recover the balance compensation amount from the owner of the tractor.

16. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, shall stand closed. There shall be no order as to costs.

JUSTICE A.SHANKAR NARAYANA

22.08.2016
v v