

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.2133 OF 2009

JUDGMENT:

Respondent No.2 – United India Insurance Company Limited in O.P.No.1192 of 2006 on the file of Motor Accidents Claims Tribunal – cum – II Additional District Judge, Warangal, preferred the instant appeal aggrieved over the order and decree, dated 29.10.2007, passed in the said O.P. mulcting liability on it, despite the fact that the deceased was sitting by the side of the driver of the tractor, which amounts to fundamental violation of the terms and conditions of the policy, and the Tribunal, though, accepted the same, still, fixed initial liability on it to pay the compensation and recover the same from the owner of the vehicle.

2. Heard Sri Srinivasa Rao Vutla, learned Standing Counsel for the appellant.

3. No representation for the respondents - claimants.

4. Respondent No.4, though, served with notice, none appears for him.

5. Though, arguments were, in fact, heard on 18.11.2016 on behalf of the appellant, since there was no representation for the respondents - claimants, the matter was directed to be listed next week thereafter. Today also, there is no representation for the respondents -

claimants and, therefore, proceeded with the disposal of appeal, as the respondents – claimants are not interested in defending their claim against the Insurance Company in the present appeal.

6. Precisely, the ground urged in the present appeal is, the Tribunal was wrong in fixing initial liability on the appellant, for the reasons, firstly, the deceased was sitting by the side of the driver of the tractor, second, the deceased, who was a boy of 15 years old, was, in fact, not hired as employee or labourer by the owner of the tractor.

7. The Tribunal, while answering this particular issue in paragraph Nos.11 and 12 of the order under challenge, placing reliance on the decision of the Honourable Supreme Court in **National Insurance Company Limited v. Baljit Kaur and others**¹, though, accepted the stand of the Insurance Company that the deceased was a gratuitous passenger, still, directed it to initially deposit the amount and recover the same from the owner of the tractor.

8. *Ex facie*, the order is wrong. The Tribunal, somehow, carried away by the direction given by the Honourable Supreme Court in **Baljit Kaur**'s case (supra). In fact, the Honourable Supreme Court in **Baljit Kaur**'s case (supra) while restating the law laid down in **New India Assurance Company Limited v. Asha Rani**², exercising power under Article 142 of the Constitution of India, directed the Insurance Company to deposit the compensation amount determined

¹ 2004 (2) ALT 33 (SC)

² AIR 2003 SC 607

initially and recover the same from owner of the vehicle. Therefore, the Tribunal was wrong in giving such a direction. No further probe is needed, as the finding recorded by the Tribunal to the extent of construing the deceased as a gratuitous passenger is not challenged by the respondents - claimants. Therefore, the order and decree under challenge are liable to be set aside, so far as fastening liability on the Insurance Company is concerned, while holding that the order and decree under challenge in all other respects can be maintained.

9. Accordingly, the appeal is allowed setting aside the order and decree under challenge, so far as fastening liability on the appellant – Insurance Company is concerned, while maintaining the order and decree under challenge in all other respects.

10. Further, a perusal of the proceeding sheet would disclose that this Court, by order, dated 18.08.2008, in M.A.CMA.MP.No.5111 of 2008, directed the appellant herein to deposit 50% of the compensation amount awarded by the Tribunal together with proportionate interest and costs, giving credit to the amount, if any, already deposited. It is not clear whether permission is granted to the respondents – claimants to withdraw the said amount. Even otherwise, if any amount is withdrawn, the appellant herein is directed to recover the same from the owner of the tractor. In case, the amount is lying to the credit of the O.P., the appellant is at liberty to ask for return of the same. It is open to the respondents - claimants to

recover the compensation amount from the owner of the tractor, who is respondent No.1 in the O.P.

11. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

December 27, 2016
MD

