

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1517 OF 2005

JUDGMENT:

The instant appeal is preferred by respondent No.2 – United India Insurance Company Limited in O.P.No.186 of 2003 on the file of Motor Accidents Claims Tribunal – cum – II Additional District Judge, Madanapalle, aggrieved by the order and decree, dated 14.02.2005, whereby and whereunder, a sum of Rs.1,34,052/- with interest at 9% per annum thereon was granted as compensation for the death of one Ameer Saheb, as against the claim of Rs.1,50,000/- laid under Section 166 (1) of the Motor Vehicles Act, 1988, by the legal heirs, seven in number, of the said Ameer Saheb, and respondent No.2 - Insurance Company was directed to initially deposit the awarded amount and then recover the same from respondent No.1 – owner of the offending vehicle.

2. The appellant is respondent No.2, whereas respondent Nos.1 to 7 are petitioners and respondent No.8 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 in brief are that, on 03.01.2003 at about

10:30 PM, while the said Ameer Saheb was proceeding along with his popcorn bags in connection with his business in the lorry bearing Registration No.AP-02-T-2345, since the driver of the lorry drove it in a rash and negligent manner near the turning of Bhagathsingh Colony over Punganur – Chowdepalli Road and was unable to control the speed, he fell down, due to which, the wheels of the lorry ran over him resulting in his death at the spot. The concerned police had registered a crime against the lorry driver. The petitioners, being the wife and children of the deceased, Ameer Saheb, claiming that the deceased was 45 years old and earning Rs.5,000/- per month on popcorn business as on the date of accident, sought Rs.1,50,000/- as compensation with interest at 12% per annum against both the respondents.

5. Respondent No.1 filed counter resisting the claim by disputing the rash and negligent driving on the part of the driver of the lorry contending that only due to the negligence of the deceased, who was 60 years old, the accident had occurred and sought to exonerate him.

6. Respondent No.2 – insurer opposed the claim contending that at the time of accident, the deceased was travelling as a gratuitous passenger in goods carrying

vehicle from Kallur to Punganur, which was a clear violation of the terms and conditions of the policy and therefore, no liability can be fastened on it. It has also taken the plea that it has reliably learnt that the deceased was only a coolie earning Rs.30/- per day and therefore, sought to dismiss the claim laid against it.

7. 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 the rash and negligent driving of the offending vehicle lorry bearing No.AP-02-T-2345 involved in the accident and whether it resulted in death of the deceased?

2. Whether the petitioners are entitled for compensation and if so, payable by whom and to what extent?

3. To what relief?”

8. During enquiry, petitioner No.1 examined herself as PW.1 besides examining an eye-witness to the occurrence as PW.2 and marked Exs.A1 to A5 to substantiate the claim laid. On behalf of the respondents, RWs.1 and 2 were examined and marked Ex.B1 - copy of Insurance Policy on consent.

9. On issue No.1, the Tribunal, on appraisal of the evidence let in by the petitioners, held that due to rash and negligent driving of the driver of the lorry the accident had occurred resulting in death of the deceased.

10. On issue No.2, the Tribunal, taking the earnings of the deceased at Rs.1,000/- per month, after deducting 1/3rd therefrom towards personal expenses worked out the annual contribution at Rs.8,004/- and taking the age of the deceased as 45 years, by applying multiplier '13' arrived at Rs.1,04,052/- towards loss of dependency and also awarded Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of consortium making a total of Rs.1,34,052/-. However, the Tribunal, basing on the contents of Exs.A1 and A2, though acceded to the stand of the Insurance Company that the deceased was travelling as gratuitous passenger or fare paid passenger, by relying on the decision of the Honourable Apex Court in **National Insurance Company Limited v. Swaran Singh and others**^[1], directed the Insurance Company to initially satisfy the award and then recover the same from the owner of the lorry.

11. The aforesaid direction is under challenge in the instant appeal by the Insurance Company on the grounds that the Tribunal having observed that respondent No.1 - owner of the lorry has violated the terms and conditions of Ex.B1 – policy, ought not to have fastened liability on it and in view of the decisions rendered by this Court in **United India Insurance Company Limited v. Mekkala**

Chandramma and others^[2] and Bhagawandas v.

Mohd. Arif^[3], it ought to have applied multiplier '10.45' and therefore, sought to exonerate it in entirety.

12. Heard Sri N.J. Sunil Kumar, learned Standing Counsel for the appellant and Sri D. Kodanda Rami Reddy, learned counsel for respondent Nos.1 to 7. None appears for respondent No.8, despite service of notice.

13. The only short question involved in this appeal is to the direction given by the Tribunal to the appellant herein to initially satisfy the award and then recover the same from the owner of the lorry, who is respondent No.8 herein, but the said direction cannot be sustained. As seen from the order under challenge, the Tribunal has placed reliance on the decision of the Honourable Supreme Court in **Swaran Singh's case (supra 1)**, but somehow, the Tribunal could not distinguish the difference between the fundamental violations and other violations. The finding recorded by the Tribunal that the petitioner was a fare paid passenger in a goods vehicle is not challenged by respondent Nos.1 to 7 herein. Therefore, the said finding remains on record undisturbed. In such an event, in view of the ratio laid down by the Honourable Apex Court in **National Insurance Company Limited v. Kaushalaya Devi and others^[4]**, **New India Assurance**

Company Limited v. Asha Rani^[5], and National Insurance Company Ltd. v. Bommithi Subbhayamma and others^[6], that the Insurance Company is not liable for payment of any compensation for the death of a gratuitous passenger travelling in a goods vehicle, the Tribunal is not right in directing the Insurance Company to initially deposit the compensation amount and then recover the same from the insured and certainly, such a direction has to be set aside. Hence, the direction given by the Tribunal that the appellant - Insurance Company shall initially deposit the compensation amount and then recover the same from respondent No.8 - owner of the lorry is hereby set aside.

14. As seen from the proceeding sheet, this Court, by order, dated 30.06.2006, directed the Insurance Company to deposit 1/3rd of the awarded amount within a period of six weeks and on such deposit, respondent Nos.1 to 4, who were majors by then, were permitted to withdraw their proportionate share and make fixed deposits as directed by the Tribunal without furnishing any security. If the amount deposited by the Insurance Company has been withdrawn by respondent Nos.1 to 4, it is open to the Insurance Company to recover the said amount from the owner of the lorry, who is respondent No.1 in the O.P. Concerning the balance compensation

amount awarded by the Tribunal, the liability cast upon the owner of the lorry is maintained and the petitioners are entitled to recover the same from respondent No.1 – owner of the vehicle.

15. Accordingly, the instant appeal is allowed setting aside the liability fastened on the Insurance Company as mentioned above. There shall be no order as to costs.

16. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

A. SHANKAR

NARAYANA, J

February 03, 2016.
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THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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- [1] 2004 ACJ 1
- [2] 2002 (2) ALT 700 (D)
- [3] AIR 1988 AP 99
- [4] (2008) 8 SCC 426 (I)
- [5] (2003) 2 SCC 223
- [6] 2005 ACJ 721 (SC)