HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

<u>M.A.C.M.A. No.1549 OF 2005</u>

<u>JUDGMENT</u>:

Respondent No.2 - M/s. New India Assurance Company Limited is the appellant herein. Aggrieved by the order and decree, dated 30-09-2004 in M.V.O.P. No.391 of 2001 passed by the learned Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Kadapa (for short 'the Tribunal'), granting a sum of Rs.25,000/- as compensation as against the claim of Rs.75,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the appellant preferred the instant appeal seeking to set aside the order and decree in so far as mulcting liability on it by the Tribunal is concerned.

2. Respondent No.2 and the appellant herein, who are owner and insurer of Tractor-cum-Trailer bearing registration No.AP 04T 8409 and 8410, respectively, are respondent Nos.1 and 2 in M.V.O.P. before the Tribunal, while respondent No.1 is the petitioner.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the M.V.O.P. before the Tribunal.

4. The facts, in brief, are that on 09-05-2000, one Nageswara Raju belonging to Ayyapurajupalli village came to the village of the petitioner and engaged her and other coolies for loading and unloading the mud in the fields of Maheswara Raju at Pulaputtur. When they all boarded a tractor-cum-trailer bearing registration Nos.AP 04T 8409 and 8410 and joined the work, and after completion of the work, they were returning on foot, the driver of respondent No.1 allowed them to travel in the trailer to their destination as they were coolies and proceeding towards Rajampet and at 3.30 p.m. since the driver drove it at high speed in a rash and negligent manner, it turned upside down near Adavi Rachapalli turning as he lost control over the tractor, due to which, all of them sustained injuries and they were shifted to Government Hospital, Rajampet for treatment. After the first-aid at Rajampet, they were referred to S.V.R.R. Hospital, Tirupati for better treatment. Out of three coolies, one succumbed to injuries while undergoing treatment on 10-05-2000. Therefore, the petitioner herein sought to grant a sum of Rs.75,000/- as compensation.

5. Respondent No.1 remained *ex parte* before the Tribunal.

6. Respondent No.2 - Insurance Company opposed the claim. A specific plea was taken that since the

petitioner traveled in a goods vehicle, its owner violated the terms and conditions of the policy by allowing 20 persons as passengers and, therefore, only the owner, who is respondent No.1, is liable to pay compensation and, finally, sought to dismiss the claim petition against it.

7. Based on the pleadings, the Tribunal framed the following three issues in the direction of fixing liability and compensation to which the petitioner is entitled.

> " 1. Whether the petitioner received injuries in
> a Motor Vehicle accident dated 9-5-2000 due to rash and negligent driving of tractor-trailer bearing No.AP04-T-8409 and 8410 by its driver belonging to the 1st respondent?
>
> 2. Whether the petitioner is entitled for compensation and if so to what amount and from whom?
>
> 3. To what relief?"

8. During inquiry before the Tribunal, the petitioner examined herself as PW.1 and marked Exs.A-1 to A-4. On behalf of respondent no.2, its local branch officer was examined as RW.2 and marked Exs.B-1 to B-3, which are copies of insurance policy, registration certificate and goods permit.

9. On issue No.1, the Tribunal holding that since tractor of respondent No.1 was insured with respondent No.2, both the respondents are jointly and severally liable

to pay compensation and, accordingly, answered the issue in favour of the petitioner. On issue No.2, having found four injuries, which are left collar bone fracture; lacerated wound about the left eye; abrasion of 6 cm x 4 cm on the left knee and chest pain being reported by the petitioner, and first injury shown as fracture and other injuries as simple injuries, a sum of Rs.15,000/- was granted towards first injury and for two simple injuries and for pain and suffering, a sum of Rs.10,000/- was granted and, thus, granted a total sum of Rs.25,000/- as compensation with interest at 9% per annum thereon fixing joint liability on respondent Nos.1 and 2.

10. It is the aforesaid order which is under challenge in the instant appeal preferred by respondent No.2 contending in the grounds that the Tribunal ignored the fact that 17 people were travelling as unauthorized passengers in tractor-cum-trailer at the relevant time and, therefore, the appellant is not liable to pay the compensation for that violation. Even the interest at 9% per annum granted by the Tribunal was more than the interest given by Nationalized Banks on term deposits and, therefore, sought to set aside the order and decree.

11. Heard Ms. I. Mammu Vani, learned standing counsel for the appellant – respondent No.2. Despite service of notice on respondents, none appears.

12. Perused the order and evidence on record, both, oral and documentary, let in by the parties.

13. The learned counsel for the appellant would submit that Ex.A-1, attested copy of first information report, and Ex.A-4, attested copy of charge sheet, would reflect that there were altogether 17 persons were allowed to traverl in the tractor by respondent No.1 which was intended for transporting the goods. As could be gathered from Exs.B-1 and B-2, copies of insurance policy and certificate of registration would reflect the same. The Tribunal, somehow, went wrong in arriving at a conclusion that respondent No.2 is also liable to pay compensation despite the fact that obligation was cast on it to indemnify respondent No.1, as he had violated the terms and conditions of the policy. It is according to the learned counsel that the owner ought not to have permitted the injured herein and others to travel in the tractor. Hence, sought to set aside the order and decree passed by the Tribunal in so far as Insurance Company is concerned and to dismiss the claim against respondent No.2, the appellant herein.

14. Since none appears for respondent Nos.1 and 2, this Court proceeded by examining the material on record. When the documentary evidence let in by the

petitioner herself would show that she boarded the tractor while she was returning home on foot, and as seen from Ex.B-3, the permit was given by the Road Transport Authority for transporting the goods, certainly, the petitioner travelling in the said vehicle is nothing but travelling as unauthorized passenger and, thus, it accounts for fundamental violation of terms and conditions of the policy. In that view of the matter, certainly, the Insurance Company cannot be made liable to pay compensation under law of indemnity. The Tribunal without examining the purport of Exs.B-1 to B-3 and even Exs.A-1 and A-4 and without appreciating that the petitioner was an unauthorized passenger or otherwise, simply tendered finding holding that the Insurance Company and the owner are jointly and severally liable to pay compensation, which, *ex facie*, is an illegal infirmity and is liable to be set aside. Hence, that finding recorded by the Tribunal is hereby set aside.

15. Accordingly, the appeal is allowed, setting aside the order and decree, dated 30-09-2004, in M.V.O.P. No.391 of 2001, passed by the Tribunal fastening liability on respondent No.2 - Insurer, who is appellant herein, and confirming the same in all other respects.

16. As seen from the proceeding sheet, this Court while granting interim stay on 25-02-2005 in MACMAMP

No.608 of 2005, directed the appellant herein to deposit half of the compensation amount awarded by the Tribunal together with proportionate interest and costs after giving credit to the amounts, if any, already deposited by it before the Tribunal within a period of eight weeks from that date. However, there appears to be no permission being granted to the petitioner to withdraw the amount. In case the petitioner has already withdrawn any amount, the Insurance Company is hereby directed to recover the said amount from the owner of the tractor-cum-trailer, who is respondent No.1 in the OP. In case, the amount is still lying deposit to the credit of the OP, the Insurance Company is at liberty to seek for return of the said amount. However, it is left open to the petitioner to recover the compensation amount granted by the Tribunal from respondent No.1, owner of the vehicle. 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

April 04, 2016.
Mgr