THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1272 OF 2005

JUDGMENT:

Respondent No.3 – National Insurance Company Limited in M.V.O.P.No.585 of 1999 on the file of Motor Accidents Claims Tribunal – cum – District Judge, Srikakulam, preferred the instant appeal aggrieved by the order and decree, dated 15.07.2004, whereby and whereunder, the Tribunal has granted Rs.1,74,500/- as compensation for the death of one Munagavalasa Hemasundara Rao in a road accident to respondent No.1, who is the mother of the deceased, since respondent No.2, grand mother of the deceased, died during pendency of the proceedings before the Tribunal and respondent No.1 was treated as legal representative of respondent No.2, mainly on the ground that the Tribunal though observed that the deceased was travelling as unauthorised passenger in a goods vehicle, fastened liability on it jointly and severally and directed it to initially deposit the amount and then recover the same from respondent No.4 - owner of the offending vehicle.

2. The appellant, Insurance Company, is respondent No.3, whereas respondent Nos.1 and 2, who are the mother and grand mother of the deceased, are petitioners and respondent Nos.3 and 4, who are the driver and owner of the offending vehicle, are respondent Nos.1 and

2 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, the claim was laid under Sections 163 (A) and 166 of the Motor Vehicles Act, 1988, by the mother and grand mother of Munagavalasa Hemasundara Rao for an amount of Rs.2,00,000/- as compensation stating that on 03.08.1999 at about 04:00 PM the said Munagavalasa Hemasundara Rao boarded a lorry bearing No.AHH-3657 belonging to respondent No.2 along with his partner, Burra Govinda Rao, to return to Tekkali having completed the work at Anakapalle, and on 04.08.1999 at about 04:00 AM, when the said lorry was proceeding mid-way between Jarjangi and Kothapet junction on National Highway No.5, as the driver of the lorry drove it in a rash and negligent manner at high speed, the lorry turned upside down resulting in injuries to Munagavalasa Hemasundara Rao and his partner and they were shifted to Government Hospital, Tekkali, for treatment and therefrom, the Munagavalasa Hemasundara Rao was referred to King George Hospital, Visakhapatnam, for better treatment, but at the time of shifting, he succumbed to the injuries.

5. Respondent Nos.1 and 2, who are the driver and

owner of the lorry, remained *ex parte* before the Tribunal. Respondent No.3 opposed the claim by raising a specific plea that as the deceased was travelling in a goods vehicle, there was contravention of the terms and conditions of the policy and thereby, the Insurance Company be exonerated from indemnifying respondent No.2.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed the following six issues:

> "1. Whether the deceased – Munagavalasa Hemasundararao died in the motor accident that took place on 04-8-1999 at about 4.00 AM, on NH-5 road in between Jarjangi and Kothapeta junction in Srikakulam district, in which the vehicle No.AHH 3657 (lorry) belonging to the 2nd respondent was involved?
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> 2. Whether the accident was due to the fault of the 1st respondent – driver of the 2nd respondent's lorry NO.AHH 3657 only?
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> 3. Whether the petitioners are dependants on the deceased – Munagavalasa Hemasundararao?
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> 4. To what compensation, the petitioners are entitled?
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> 5. Which of the respondents are liable to pay the said compensation?
>
> 6. To what result?"

7. 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 A4 to

substantiate the claim laid. On behalf of respondent No.3, no evidence, either oral or documentary, was let in.

8. On issue Nos.1 to 3, the Tribunal has recorded findings in favour of the petitioners. On issue Nos.4 and 5, the Tribunal, while determining the compensation at Rs.1,74,500/-, though, it has recorded a finding that the deceased was travelling in the lorry as an unauthorised passenger, to whom there was no coverage of insurance policy as per Motor Vehicles (Amendment) Act, 1994, and has referred to the decisions cited by the learned counsel for Insurance Company, still, in the result portion the Tribunal has held that respondent Nos.1 to 3 are jointly and severally liable to pay the compensation with interest at 9% per annum and granted liberty to respondent No.3 – Insurance Company to recover the amount from the owner of the lorry by initiating execution proceedings. The reason for giving such a direction is that the Tribunal appears to have taken the aid of the decision of the Honourable Apex Court in **National Insurance Company Limited v. Baljit Kaur and others**[1], but, somehow, it has overlooked the principle laid down by the Honourable Apex Court in the said decision that the decision rendered in **New India Assurance Company Limited v. Asha Rani**[2] is prospective in effect. That appears to be the reason, the Tribunal has given such a direction contrary to

what was intended by the Honourable Apex Court in **Baljit Kaur's case (supra 1)**.

9. The aforesaid direction is under challenge in the instant appeal by the Insurance Company mainly on the ground that the Tribunal having observed that the passengers travelling in the lorry were admittedly unauthorised passengers, for whom there is no coverage of insurance policy, was not right in directing it to pay the compensation amount and recover the same from the owner of the lorry by filing execution petition.

10. Heard Sri R.K. Suri, learned Standing Counsel for the appellant and Sri A. Rama Rao, learned counsel for respondent No.1. The appeal was dismissed against respondent No.3, who was the driver of the lorry. Though respondent No.4, owner of the lorry, was served with notice, none appears for him. Respondent No.2 died during pendency of the proceedings before the Tribunal and respondent No.1 was treated as legal representative of respondent No.2 as observed above.

11. There is not much to deliberate on the contention raised by the Insurance Company herein. The facts are not in dispute as to the deceased travelling in a goods vehicle and construing him as an unauthorised passenger, in regard to which finding no appeal is preferred by respondent No.1 – claimant. Therefore, when

such finding remains unchallenged, in view of the ratio laid down by the Honourable Supreme Court in **Asha Rani's case (supra 2), Baljit Kaur's case (supra 1), National Insurance Company Ltd. v. Bommithi Subbhayamma and others**[3] **and National Insurance Company Limited v. Kaushalaya Devi and others**[4], that the Insurance Company is not liable for payment of any compensation for the death of a gratuitous passenger travelling in a goods vehicle, certainly, no direction of the nature under challenge can be issued by the Tribunal to initially pay the amount and recover the same from the owner of the offending vehicle by filing execution petition. Hence, the impugned order and decree to the extent of directing the appellant - Insurance Company to pay the compensation amount and realise the same from respondent No.4 - owner of the lorry is hereby set aside.

12. As seen from the proceeding sheet, it is clear that this Court, by order, dated 22.12.2004, directed the Insurance Company to deposit the entire amount along with proportionate costs and interest within a period of six weeks, after giving credit to the amount if any deposited, and on such deposit, permitted respondent No.1 to withdraw the same without furnishing any security.

13. Learned counsel for the appellant represents that he is not aware whether the amount deposited by the

Insurance Company was withdrawn by respondent No.1 or not. Equally so, learned counsel for respondent No.1 – claimant expressed his ignorance. Therefore, it is ordered that in case the amount deposited by the appellant was already withdrawn by respondent No.1, the Insurance Company is directed to recover the same from the owner of the lorry and if the amount still remains to the credit of the O.P., the Insurance Company is at liberty to seek return of the same from the Tribunal. Respondent No.1 – claimant is at liberty to recover the compensation amount due from the owner of the lorry.

14. 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.

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

A. SHANKAR NARAYANA, J

February 08, 2016.
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[1] 2004 (2) SCC 1

[2] (2003) 2 SCC 223

[3] 2005 ACJ 721 (SC)

[4] (2008) 8 SCC 426 (DB)