HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.3023 OF 2007

JUDGMENT:

The 2nd respondent-Insurer among the two respondents including the owner of the tractor and trailer bearing No.AP 22 V/ 0467/0468 and 468 in O.P.No. 684 of 2005 on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum-Addl. District Judge, Mahaboobnagar (*for short, 'Tribunal')*, filed u/s.166 of the Motor Vehicle Act,1988 *(for short, 'the Act')*, for a claim of Rs.4,00,000/-by the claimants parents (during the pendency of the petition, the 1st petitioner-father of the deceased died and the 2nd petitioner-mother of the deceased is the only Legal representative of the 1st petitioner) of the deceased by name Krishnaiah, for the death caused by the rash and negligent driving of the driver of the crime tractor and Cr.No.79 of 2005 u/sec.337 of IPC but later filed chargesheet u/sec.304-A IPC, on contest by the 2nd respondent opposing the claim and any liability and entitlement, for the tribunal having held that the accident was the result of the rash and negligent driving of the driver and also having held the deceased as unauthorized passenger of the goods vehicle, by applying principle laid down in National Insurance Company Limited Vs. Baljit Kaur[1], by its award dated 14.08.2007 granted compensation of Rs.1,08,000/- with interest at 7.5%p.a. with pay and recover directions against the Insurer, the 2nd respondent-Insurer aggrieved by the same, preferred the present appeal with the contentions that the tribunal erred in awarding pay and recovery directions as the deceased was travelling as an unauthorized passenger in a goods vehicle and to exonerate him by allowing the appeal.

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[1] **(2004) ACJ 428**

2. The owner of the crime vehicle though served in appeal failed to attend hence taken as heard and heard the learned counsel for the Insurer and perused the material on record.

3. What the law laid down in Baljit Kaur[2] supra is that the expression of **New India Assurance Co. Ltd. v. Asha Rani[3]** the three judge Bench of December, 2002 is only prospective in operation. In fact, the accident in question was dated 02.06.2005 and as per the Baljit Kour supra, once Asharani supra is prospective in operation equally to the accidents occurred after that expression, thereby lower Court misread the expression of Baljit Kour supra and wrongly applied to the facts of the case, as rightly contended by the learned counsel for the Insurer. Thus, the Insurer is not liable to pay but to be exonerated for the policy not covers the risk and there are no grounds to order pay and recovery.

4. In the result, the appeal is allowed, however, it is made clear that whatever amount was deposited, if at all permitted and withdrawn by the 2nd petitioner to the claim petition to that extent, the Insurer cannot recover back from the claimant but for against the owner and so far as the amount not withdrawn, the Insurer is entitled to file cheque petition and withdraw the same. There is no order as to costs. Consequently, pending miscellaneous petitions, if any, in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:16.08.2016
Vvr

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[2] **(2004) ACJ 428**
[3] **(2003) 2 SCC 223**