

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2766 OF 2004

JUDGMENT:

The Oriental Insurance Company Limited, represented by its Divisional Manager, Bhimavaram, which is respondent No.2 in M.V.O.P. No.552 of 1995 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Guntur (for short, 'the Tribunal'), aggrieved by the order dated 18.02.1999, whereby and whereunder, the Tribunal has granted a sum of Rs.25,000/- with interest at 12% per annum as against the claim of Rs.1,00,000/- laid under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by respondent No.1 herein (claimant) in a road accident, preferred the instant appeal under Section 173 of the Act mainly on the ground that respondent No.1 herein (claimant) was travelling in a goods vehicle as passenger accounting for violation of terms and conditions of the insurance policy.

2. The appellant herein is respondent No.2, while respondent No.1 herein is the petitioner and respondent No.2 herein, who is the owner of the lorry bearing registration No.AP 37T 522, is respondent No.1 in the original petition.

3. For the sake of convenience, the parties

hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that the guardian of the petitioner along with others engaged a lorry bearing registration No.AP 37V 522 at Palakollu to transport 1500 ducks and their owners for a sum of Rs.3,000/- to go to Butchipapannapalem of Rompicherla Mandal, Guntur District, and started on 27.07.1995 at about 9-00 p.m., and on 28.07.1995 at about 7-00 a.m., when the lorry reached Dechavaram Midde of Nakerikallu Mandal, Guntur District, it turned upside down due to rash and negligent driving of its driver, occasioning injuries to the petitioner along with others and she was treated in Government Hospital. Even 350 ducks also died. Concerned police also registered a case in Crime No.62 of 1995 for the offences punishable under Sections 304-A and 338 IPC against the driver of the lorry. According to the petitioner, she was getting Rs.1,000/- per month and lost her earning capacity, and, therefore, sought the aforesaid amount as compensation.

5. Respondent No.1 remained *ex parte*. Respondent No.2-insurer filed counter mainly contending that the petitioner travelled in a goods vehicle, which accounts for violation of terms and conditions of the insurance policy, and, thereby, sought to dismiss the claim against it.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether the accident took place due to rash and negligent driving of the driver of lorry AP37V 522?

2. To what compensation if any the petitioner is entitled and from whom?

3. To what relief ?"

7. During enquiry, the petitioner examined herself as P.W.2 besides examining her father as P.W.1 and the doctor, who treated her, as P.W.3 and marked Exs.A.1 to A.4 to substantiate her claim; whereas, on behalf of respondent No.2, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

8. On appraisal of evidence let in by the petitioner, the Tribunal held issue No.1 in favour of the petitioner; and on issue No.2, basing on the description of injuries recorded in Ex.A.1-wound certificate and the evidence of P.Ws.2 and 3, who are the injured and the doctor, granted a sum of Rs.25,000/- with interest at 12% per annum from the date of petition till realization.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds

that the petitioner had travelled in a goods vehicle as passenger, who was not authorized to travel accounting for violation of terms and conditions of the policy and goods owner is not entitled for any compensation in view of the decisional law of the Hon'ble Supreme Court, and, therefore, the Insurance Company is not liable to pay compensation.

10. Heard Sri Kota Subba Rao, learned Standing Counsel for respondent No.2 (appellant-Insurance Company). No representation for the petitioner (respondent No.1 herein).

11. Learned Standing Counsel for respondent No.2-Insurance Company (appellant) fairly submits that since the order under challenge was passed on 18.02.1999 and the claim petition relates to the year 1995 and in view of the judgment of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**^[1] and in **National Insurance Company Ltd., v. Baljit Kaur and others**^[2], the Insurance Company be directed initially to deposit the amount and recover the same from the owner of the vehicle, who is respondent No.2 herein by filing an execution petition in view of the decision of the Hon'ble Supreme Court in **National Insurance Company Limited vs. Bommithi Subbayamma**^[3].

12. Since the order under challenge was rendered by the Tribunal prior to rendering of the judgments in **Asha Rani's** case (supra 1) and **Baljit Kaur's** case (supra 2), the order and decree under challenge are modified directing respondent No.2-Insurance Company (appellant herein) to deposit the amount awarded by the Tribunal initially and recover the same from the owner of the vehicle, who is respondent No.1 (respondent No.2 herein).

13. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by directing respondent No.2-Insurance Company (appellant herein) to deposit the amount awarded by the Tribunal initially and recover the same from the owner of the vehicle, who is respondent No.1 before the Tribunal (respondent No.2 herein) and confirming the same in all other respects. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

29th February, 2016

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[\[1\]](#) (2003) 2 SCC 223

[\[2\]](#) 2004 ACJ 428 (SC)

[\[3\]](#) 2005 ACJ 721