**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**M.A.C.M.A. No.2794 OF 2005**

**JUDGMENT:**

Respondent No.2 - M/s. United India Insurance Company Limited is the present appellant. Aggrieved by the order and decree, dated 13-07-2005, in O.P. No.900 of 2002, on the file of the Chairman, Motor Accidents Claims Tribunal - cum -
IV Additional District & Sessions Judge (Fast Track Court), Ranga Reddy District at L.B. Nagar (for short 'the Tribunal), the instant appeal is preferred on the ground that the Tribunal went wrong in fastening liability on it to pay the compensation amount of Rs.2,79,000/- for the death of one Bandala Sathaiah, whose legal representatives are the claimants in the said O.P.

2. The respondent No.6 and appellant herein, who are owner and insurer of a goods auto-rickshaw bearing registration No.AP 11U 7862, respectively, are respondent Nos.1 and 2, respectively, in O.P. before the Tribunal and respondent Nos.1 to 5 are the petitioners.

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 10-03-2002, one Bandala Sathaiah being worker in a bakery shop proceeded from Maal village to neighbouring villages in an auto-rickshaw bearing registration No.AP 11U 7862 along with its driver for supply of bakery food items and when the auto-rickshaw reached near KM. Stone No.61/4 in the outskirts of Polepalli village at about 8.30 a.m., since the driver drove it in a rash and negligent manner and lost control over it, due to which, the auto-rickshaw fell down and Sathaiah came under it resulting in his instantaneous death.

i) The petitioners claiming that the deceased was working as labourer in the backery shop since 12 years, earning Rs.2,400/- per month as salary and Rs.15/- per day as batha, sought a sum of Rs.2,95,000/- as compensation from respondent Nos.1 and 2, who are owner and insurer respectively.

5. Respondent No.1, owner of the auto-rickshaw, remained *ex parte* before the Tribunal.

6. Respondent No.2 - Insurer filed an elaborate counter raising a specific plea that the auto-rickshaw was a transport goods vehicle and there was no provision for carrying passengers and even no seat was provided for any person other than driver and thus accounted for

violation of terms and conditions of insurance policy. The Insurance Company also pleaded that no premium was paid for coverage of passengers or for any person, and that, in that view of the matter, the insurer cannot be mulcted with any liability at all.

7. Based on the said pleadings, the Tribunal framed three issues about fixing the liability for accident.

8. During inquiry before the Tribunal, the petitioners examined PWs.1 and 2 and marked Exs.A-1 to A-8 to substantiate their claim. On behalf of respondent No.2, its Assistant Divisional Manager was examined as RW.1 and marked Exs.B-1 to B-6 to prove its stand.

9. The Tribunal held issue No.1 in favour of the petitioners holding that on account of rash and negligent driving of the driver of the auto-rickshaw, the accident had occurred resulting death of the deceased. On issue No.2, the Tribunal fixing the income of the deceased at Rs.1500/- per month or Rs.18,000/- per annum and his age as 40 years and applying multiplier '14' arrived at Rs.2,52,000/- towards loss of dependency, besides granting Rs.15,000/- towards loss of consortium and Rs.10,000/- towards loss of estate and Rs.2,000/- towards funeral expenses and, thus, making a total compensation of Rs.2,79,000/- with interest at 7.5% per annum thereon.

The Tribunal in paragraph Nos.18 and 19 of the order though, referred to the evidence of RW.1 and Ex.B-6 and Ex.A-1 observed that Ex.B-6 is an ‘act policy’ and while observing that the vehicle was a goods vehicle, still, stating that respondent No.2 failed to produce any record to prove that the deceased had travelled as gratuitous passenger in the said auto-rickshaw, made the Insurance Company liable to pay compensation.

10. Aggrieved by the said finding recorded and the liability fastened on it, the instant appeal is preferred by the Insurance Company, precisely projecting two grounds. The first being that the deceased was an unauthorized passenger or gratuitous passenger which the Tribunal without assigning any reasons, has rejected the same. Second, that there was no premium paid to cover the risk of the deceased. It is also stated that the Tribunal ought to have taken into consideration the factum of payment of compensation in a Workman Compensation Case filed earlier by the deceased driver in the same accident. Hence, it sought to set aside the order and decree

11. Heard Sri P. Venkateswarlu, learned standing counsel for appellant - Insurance Company and Sri V. Narasimha, learned counsel for respondent Nos.1 to 4 - Petitioners. So far as respondent Nos.5 and 6 are concerned, the appeal was dismissed for default on

03-01-2012, but it would not make any difference in adjudicating upon the controversy between the parties in the instant appeal.

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

13. The only short question that arises for consideration is, whether the liability fastened on the Insurance Company, appellant herein, can be sustained?

14. The Tribunal has made positive observations in paragraph Nos.18 and 19 that the deceased was travelling as a passenger and that the policy was an 'act policy' and the vehicle was a goods carriage, still, just observing that respondent No.2 failed to produce any record to prove that the deceased had travelled in the said auto-rickshaw as gratuitous passenger, fastened liability on Insurance Company, thus, reflecting that the Tribunal completely deviated in its approach in appreciating the evidence on record and the fundamental violation of terms and conditions of the policy. The record filed by the petitioners through Exs.A-1, A-2, A-3 and A-5 would clinchingly establish that the deceased was actually travelling in the said auto-rickshaw, which is a transport vehicle. In the face of such concrete evidence on record, the Tribunal was wrong in making observation that

respondent No.2 failed to produce any record to prove that the deceased had travelled in the auto-rickshaw as a gratuitous passenger. Thus, the said finding is, certainly, a deviation in appreciating the evidence on record which, in fact, accounts for a perverse finding being recorded which is liable to be set aside.

15. Accordingly, the appeal is allowed setting aside the order and decree, dated 13-07-2005, in O.P. No.900 of 2002 passed by the Tribunal to the extent of liability fastened on the appellant - Insurance Company - respondent No.2, however, maintaining the order and decree in all other respects so far as the liability of respondent No.1 - owner is concerned.

16. It is stated by the learned counsel on either side that as per the orders, dated 21-10-2005, passed by this Court in MACMAMP No.4733 of 2005, the appellant has deposited half of the awarded amount including interest and costs. Even, the said amount was withdrawn by the petitioners as permission was accorded in the very same order. Therefore, it is open for the appellant - Insurance Company to recover the aforesaid amount deposited by it in Court from respondent No.1 - owner, and the petitioners are at liberty to recover the remaining half amount from the owner of the vehicle. There shall be no order as to costs.

17. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

**A. SHANKAR NARAYANA, J**

**February 26, 2016.**

Mgr