HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1488 OF 2009

JUDGMENT:

The United India Insurance Company Limited, represented by its Divisional Manager, Divisional Office, Subhash Road, Ananthapur, who is respondent No.3 in O.P. No.762 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge (Fast Track Court), Anantapur (for short, 'the Tribunal'), assailing the order dated 02.05.2005, whereby and whereunder, a sum of Rs.1,43,600/- was granted as compensation for the death of one Linganna in a road accident as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), preferred the instant appeal under Section 173 of the Act, mainly on the ground that the policy does not cover the risk of the deceased and that the deceased ought to have construed as unauthorized passenger in the fact-situation occurring herein.

2. The appellant herein, who is the insurer of the accident vehicle, is respondent No.3, while respondent Nos.1 to 3 herein, who are the wife and children of the said Linganna, are the petitioners, and respondent Nos.4 and 5 herein, who are the driver and owner of the tipper bearing registration No.AP 02U 829, are respondent Nos.1 and 2, respectively, 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 fact-situation would reflect that on 02.06.2000, the said Linganna (deceased) along with two others, at request, boarded the tipper bearing registration No.AP 02U 829, which was already loaded with gravel at Kalyandurg in order to go to Gundlapalli village, and when it reached near Narasapuram at about 8-00 a.m., since the driver of the tipper drove it in a rash and negligent manner at high speed, lost control over the same on seeing a bullock cart coming in opposite direction and when applied sudden brakes, it turned upside down, as a result of which, the deceased along with two others fell down from the top of the load of the tipper and the gravel fell on them, due to which, the deceased sustained grievous injuries and later succumbed to injuries. His wife and children laid the claim seeking a sum of Rs.2,00,000/- as compensation.

5. Respondent Nos.1 and 2, who are driver and owner of the accident vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.3-insurer filed counter specifically pleaded that fare paid passenger is prohibited to travel in the tipper as per the terms and conditions of the policy and the very fact that the deceased was allowed to travel along with two others would show that

they are gratuitous passengers and, therefore, sought to dismiss the claim petition.

7. The Tribunal having framed three issues, examined P.Ws.1 and 2 and marked Exs.A.1 to A.3 on behalf of the petitioners, whereas, on behalf of respondent No.3-Insurance Company, examined its official from the local branch as R.W.1 and marked a copy of insurance policy as Ex.B.1.

8. On appraisal of evidence on record, the Tribunal, though, recorded a finding in favour of the petitioners on issue No.1, but however, having determined the compensation of Rs.1,43,600/- referring to certain authorities relied on by both sides, while agreeing with the stand of the Insurance Company, still, fastened liability to the extent of initial payment and recover the same from the owner of the vehicle.

9. It is the aforesaid order which is under challenge in the instant appeal filed by insurer contending in the grounds that since the deceased was travelling along with goods on the said tipper belonging to respondent No.2 at the time of accident, it amounted to violation of terms and conditions of the insurance policy and that the Tribunal went wrong in fastening liability on the insurer to pay the amount of compensation initially and recover the same from the owner of the vehicle and, therefore, sought to allow the instant appeal by setting aside the order and decree to the extent of the direction given to it.

10. Heard Sri A.V.K.S.Prasad, learned Standing Counsel for the appellant-insurer. No representation for respondent Nos.1 and 3. Though, respondent No.5 was served, none appears for him. It is endorsed in the cause title of grounds of appeal that respondent No.4-driver is not a necessary party in the instant appeal.

11. Perused the copy of insurance policy marked as Ex.B.1. It is an 'Act policy'. Besides the same, the vehicle is a goods vehicle and the fact-situation clearly reflects that the tipper was already loaded with gravel, on which the deceased along with two others said to have sat, which was impermissible and nothing but violation of terms and conditions of the insurance policy, which has been proved through the evidence of R.W.1 and, therefore, the Tribunal directed the Insurance Company to recover the amount of compensation paid to the petitioners from the owner of the vehicle. The said direction given by the Tribunal would not sustain in view of the law laid down by the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**[1], **National Insurance Company Ltd., v. Baljit Kaur and others**[2], **National Insurance Company Limited vs. Bommithi Subbayamma**[3] and **National Insurance Company Limited v. Savitri Devi and others**[4]. Hence, there is every merit in this appeal.

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[1] (2003) 2 SCC 223
[2] 2004 ACJ 428 (SC)
[3] 2005 ACJ 721
[4] (2013) 11 SCC 554

12. Accordingly, the instant appeal is allowed setting aside the decree and order dated 02.05.2005 in O.P. No.762 of 2000 passed by the Tribunal in giving direction to the Insurance Company-appellant to pay initially the amount of compensation and recover the same from the owner of the vehicle, however, maintaining the order and decree in all other respects. There shall be no order as to costs.

13. The proceeding sheet would show that, while granting stay on 21.10.2005 in M.A.C.M.A. M.P. No.4805 of 2005, the Insurance Company-appellant was directed to deposit half of the awarded amount including interest and costs within a period of six weeks duly giving credit to the amount, if any, already deposited and the said condition is complied with as per the submission made by the learned Standing Counsel for the Insurance Company-appellant. In case, the claimants have received any amount, the Insurance Company-appellant is at liberty to recover the said amount from the owner of the vehicle. In case, the amount is still available in deposit to the credit of the original petition, the Insurance Company-appellant is at liberty to ask for return of the same. The claimants are at liberty to recover the compensation awarded by the Tribunal from the owner of the accident vehicle, who is respondent No.2 in the original petition.

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

A. SHANKAR NARAYANA, J

29th August, 2016

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