

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

C.M.A.No.3966 OF 2004

JUDGMENT:

The injured claimant aggrieved by the award of the tribunal dated 06.04.2004 in O.P.No.198 of 2000 on the file of the learned I Addl.Motor Accidents Claims Tribunal, Nellore (*for short, 'Tribunal'*), filed under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), maintained by him against the owner and Insurer of the lorry bearing No.AP 27 V 0576 for a claim of Rs.75,000/- since awarded of Rs.22,750/- with interest at 9%p.a. that too only against the owner by exonerating the Insurer from the finding that the injured was an unauthorized passenger of the goods vehicle and the Insurer is not liable to indemnify the owner, maintained the appeal with the contentions that the tribunal gravely erred in exonerating the Insurer instead of joint liability at best should have ordered for pay and recovery by following the expression in National Insurance Company Limited Vs.Baljit Kour¹, hence to allow the appeal either to fix joint liability at least or to the extent of pay and recovery. The learned counsel for the appellant reiterated the same placing reliance on the expression supra.

2. Whereas, it is the contention of the learned counsel for the 2nd respondent-Insurer, from the 1st respondent-owner of the vehicle remained exparte before the tribunal even served in the appeal for no proof and fresh notice not taken ultimately dismissed for default, no way fatal to the maintainability of the appeal vide M.Chakrarao v. Y.Baburao², that the award of the tribunal holds good for the injured was an unauthorized passenger of the goods vehicle for no liability of the Insurer to indemnify.

¹ (2004) 1 ALD 98(SC)

² 2001 (1) ALT 495 DB

3. Heard and perused the material on record.

4. The expression in Baljit Kour supra is very clear that the earlier expression of the Apex Court in New Assurance Company Vs. Asha Rani³ of December, 2002 is only prospective in operation and where earlier there is any joint liability fixed basing on New India Assurance Company Limited Vs. Satpal Singh⁴ though by virtue of the expression in Asha Rani to subserve the ends of justice, it is required to direct the Insurer to pay and recover. Here, in the case on hand, the award of the tribunal was dated 06.04.2004 it is the date of the award criteria and not the date of the accident.

5. Once the expression in Asharani supra held in Baljit kour supra, as prospective in operation and also the Insurer not liable to indemnify for the injured as unauthorized passenger of goods vehicle, there is nothing to interfere with the award of the tribunal.

6. In the result, appeal is dismissed with no costs. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 13.10.2016
Vvr

³ (2003) 2 SCC 233

⁴ AIR 2000 ACJ 1