

*** HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

+ C.M.A.No.205 of 2004

AND

Cross Objections SR.No.20366 of 2004

AND

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C.M.A.No.206 of 2004

AND

Cross Objections SR.No.20364 of 2004

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% Dated 10.06.2016

C.M.A.No.205 of 2004

Oriental Insurance Company Limited ... Appellant

Vs.

\$ Korva Manjula and three others ... Respondents

C.M.A.No.206 of 2004

Oriental Insurance Company Limited ... Appellant

Vs.

\$ Pitla Sudershan and three others ... Respondents

! Counsel for the appellant : Sri A.V.K.S. Prasad

^ Counsel for the respondents : Sri P. Radhive Reddy

<GIST:

> HEAD NOTE:

? Cases referred

1. 2003 (2) SCC 223
2. 2003 (2) SCC 339
3. 2003 (9) SCC 668
4. 2004 (2) SCC 1

5. 2000 (1) SCC 237
6. 2013 ACJ 1403
7. (2005) 6 SCC 236
8. JT-2003(2) SC 595 = 2003 ACJ 611
9. (2004) 13 SCC 224=2004-SAR(civil)-290

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

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COMMON JUDGMENT:

The two injured claimants, by name Korva Manjula and Pitla Sudershan, respectively maintained the two claim petitions in O.P.Nos.253/1998 and 288/1998 under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') claiming compensation of Rs.2,00,000/- in each, for the injuries allegedly sustained by them while travelling in the tractor and trolley bearing Nos.AP-25-D-6768 and ADB 1248, from the vehicle turned turtle while in the journey on the date of accident dated 20.03.1998 at about 05.00 PM within the limits of PS Makloor, due to rash and negligent driving and from the report, police registered crime No.15/1998 covered by Ex.A.1 respectively and after investigation filed charge sheet against the driver of the said vehicle i.e., the trolley propelled to the tractor, that belong to 2 different owners, claim petitions R.1 and R.3 by name Chitti Laxmi Narsaiah and Neelam Bhasker, both insured respectively with Oriental Insurance Company Limited and New India Assurance Company Limited, claim petitions R.2 and R.4.

2. The Tribunal after contest, particularly by both the insurers, held by the award dated 23.07.2002 respectively in both the claim petitions, awarded compensation respectively of Rs.1,01,500/- and

Rs.1,87,000/- with interest @ 9% per annum with joint liability on owner and insurer of the tractor i.e., claim petitions respondent Nos.1 and 2 only by exonerating the insurer and owner of the trolley.

3. It is impugning the same, the 2nd respondent i.e., insurer of the tractor by name Oriental Insurance Company Limited maintained the two present appeals supra. The claimant respectively in each of the two claim petitions covered by the two appeals maintained cross objections.

4. Heard the learned counsel for the insurer vis-à-vis learned counsel for the claimant respectively and at their request to take both the matters for common disposal with the respective cross objections taken up together for disposal and perused the material on record.

5. The finding of the Tribunal respectively in both the claim petitions in fixing the liability against R.1, owner of the tractor and its insurer R.2 is that the evidence on record shows it is due to rash and negligent driving of the driver of the tractor to which the trolley was propelled, proving from the Ex.A.1-FIR and A.2-charge sheet vis-à-vis the evidence of the injured respectively and with reference to Ex.A3-injury certificate respectively. RW.1 is the employee of 2nd respondent insurer of the tractor and no witness even was examined on behalf of the R.4 insurer, but for both the policies marked by consent as Ex.A6 and A7 respectively. The Tribunal in its finding having held the accident was the result of rash and negligent driving of the driver of the tractor to which the trolley is propelled and in which trolley the injured persons were sitting and travelling, could assign no reason to exonerate the respondent Nos.3 and 4 in fixing the liability against respondent Nos.1 and 2. In the grounds of appeal by the tractor insurer, it is the contention that when injured persons were sitting and travelling in the trolley propelled to the tractor that belongs to R.3 insured with R.4, the insurer and owner of tractor alone cannot be

made liable, but for if at all of the owner and insurer of the trolley also with joint liability. It is also the contention that the Tribunal went wrong in fixing the liability on insurer ignoring the factum of the injured persons are unauthorized and gratuitous passengers in the goods trolley and not entitled to any compensation against the insurers to indemnify the respective owners but for against the owners including under Section 147 of the Act.

6. The contentions in the cross objections filed by the respective two claimants are in impugning the quantum of compensation as utterly low, while saying otherwise the award fixing liability of insurer to indemnify holds good for any insurer to pay and share from other as joint tort features.

7. Before coming to the merits in the appeal, this Court feels it just to answer the contentions in the cross objections in both the claim petitions on the quantum. The Out Patient tickets were filed and referred as Ex.A4 respectively. Once the injured persons were treated as out patients, the incredible evidence of PW.2 Dr. L.Ramulu, cannot be relied for his saying the injured persons sustained fractures and got disability, who was dismissed from service and in the habit of giving fake certificates by utilising the printed forms available in the hospital, taken out by him while in service as Government Doctor and his evidence cannot be placed reliance was the conclusion arrived in good number of cases by this Court including in some of them confirmed by the Apex Court. Having regard to above, this Court is not inclined, more particularly, from the injured were shown treated as out patients, for not enhancing of the respective quantum of compensation awarded. It is even taken as both injured sustained fractures, for no proof of permanent disability there is nothing to enhance the quantum. Thereby the cross objections are liable to be dismissed, without prejudice to the insurer's contest on other aspects.

8. Now coming to the liability of the insurers, the law is fairly settled

more particularly from the expression of the Apex Court in ***New India Assurance Co. Ltd Vs. Asha Rani & Ors***^[1] that is reiterated by another Three Judge Bench by subsequent expression in ***Oriental Insurance Company Ltd Vs. Devireddy Konda Reddy & Others***^[2] and in ***National Insurance Co. Ltd Vs. Ajit Kumar And Ors***^[3] of the insurer of vehicle owner for unauthorized passenger of a goods vehicle travelling cannot be made liable from the Act policy to indemnify; unless there is a specific coverage of the risk by contractual policy obligations as envisaged under section 147 of the Act. Thereby there is force in the contention of the insurer is not liable leave about the liability ought to have fixed otherwise if at all any joint liability with equal responsibility. However, learned counsel for the claimants in contra to said contentions, placed reliance on the subsequent Three Judge Bench expression of the Apex Court in ***National Insurance Company Limited Vs. Baljit Kaur and Others***^[4], where the issues arising were, whether there was change in the wording of Section 147(1)(b) of the Act from the subsequent amendments to it by the amended Act, 1994. It was discussed and concluded in answering the issue particularly from Para 17 that despite the amendment there is no difference and especially from what is laid down in 1988 Act in ***Asha Rani*** reiterated in ***Devireddy Konda Reddy*** and ***Ajit Kumar Supra*** holds good. However, in ***Baljit Kaur's case*** (Supra 4), the expression clarified further the position of law from the contentions raised therein that, from the accident occurred was in the year 1999 and as per Satpal Singh's expression i.e., ***New India Assurance Co.Ltd vs Satpal Singh Muchai***^[5] where awards were passed, other than from Act policy fixing liability on the insurer to indemnify, before the expression of ***Asha Rani*** Supra, clarifying the legal position of non-liability; from the ambiguity in the proposition that was prevailing earlier in this field, by giving prospective application to the expression

in Asha Rani; in a case where award was passed for the accident taken place relying upon in **Satpal** prior to expression of **Asha Rani** fixing joint liability on the insurer, though insurer cannot be made liable, the Appellate Court can mould the relief as pay and recovery to execute and enforce by the insurer on payment to recover from the owner/insured respectively.

9. Having regard to the above, from the expression in **Baljit Kaur** (Supra 4) squarely applies to the two cases on hand, more particularly, from the facts that the accident dated 20.03.1998 and the award of the Tribunal particularly from Para 18 in answering issue No.1 observed referring to **Satpal singh** in fixing liability, relying on the expression in **Baljit Kaur**, though the insurer cannot be made liable to indemnify, to order to the insurer to the extent of pay and recover. So far as exoneration of R.3 and R.4, the Tribunal went wrong, that too, it is the trolley of the R.3 insured by R.4 from the policy in force not in dispute and the injured persons were travelling by sitting in the trolley belongs to R.3, when propelled to the tractor in use; the Tribunal ought to have fixed equal joint liability on the both vehicle owners with respective insurers if at all. Thus the law is clear that only in those matters where awards passed fixing joint liability on insurer as per Satpal Singh Supra, before the date of decision rendered in Asha Rani Supra, since Asha Rani Supra is prospective in application for non-liability of insurer, unless there is a contractual liability specifically for persons travelling in goods vehicle unauthorizedly (same those covered even by Act policy under Section 147(1) of the Act), instead joint liability even fixed, the insurer to be relieved only to the extent of pay and recover from insured.

10. Having regard to above, all the respondents are jointly and severally liable for the two insurers to indemnify equally to the extent of pay and recover. In fact in **Baljit Kaur's case (supra 4)**, it referred for such a direction the scope of Section 168 of the Act, in holding that

even from the wording of Section 168 of the Act, the Tribunal can apportion and fix the liability respectively among the respondents *inter se* though otherwise of the joint liability are equally liable. So far as rate of interest granted at 9%, it is one of the contentions of the counsel for the insurer that the interest awarded is excessive. In fact even the latest Three Judge Bench of the Apex Court in ***Rajesh Vs. Rajbir singh***^[6] it is clearly laid down that interest at 7.5% is just and reasonable and same is the expression of the Apex Court in ***TN Transport Corporation v. Raja Priya***^[7] referring to steep fall in bank lending rate that interest at 7.5% p.a. is just and reasonable. Accordingly, interest is reduced from 9% to 7.5% per annum.

11. Accordingly and in the result while dismissing the cross objections, both the appeals are partly allowed holding that both the insurers for the respective sums awarded by the Tribunal, however only with rate of interest at 7.5% p.a., indemnify the respective insured to the extent of paying to the claimants, however, on such payment to recover from the owner of the vehicles, with the following pay and recovery directions:-

It is made clear from the settled expressions of the Apex Court in ***United India Insurance Co. Ltd. V. Lehu***^[8] & ***Oriental Insurance Company Limited Vs. Nanjappan & Others***^[9] that the insurer is entitled, while depositing the amount payable, if not deposited or paid any amount so far to deposit in bank to approach the Tribunal to direct the RTA concerned not to register any transfer of the crime vehicle and to seek for attachment of the crime vehicle or other property of the insured as an assurance for execution and recovery in the same proceedings or under revenue recovery as per the MV Act, 1988 and also ask the Tribunal not to disburse the deposited amount to claimant (but for to invest in a bank) till such attachment order is made. However, after the same, the Tribunal shall not withhold the amount of

the claimant, if there is any necessity to permit for any withdrawal but for to invest the balance in fixed deposit in a nationalized bank. Rest of the terms of the award of the Tribunal holds good.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 10.06.2016

Note: L.R. Copy to be marked

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

[\[2\]](#) 2003 (2) SCC 339

[\[3\]](#) 2003 (9) SCC 668

[\[4\]](#) 2004 (2) SCC 1

[\[5\]](#) 2000 (1) SCC 237

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[\[7\]](#) (2005) 6 SCC 236

[\[8\]](#) JT-2003(2) SC 595 = 2003 ACJ 611

[\[9\]](#) (2004) 13 SCC 224=2004-SAR(civil)-290