HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3210 OF 2005

JUDGMENT:

National Insurance Company Limited, Warangal, is the appellant herein. Aggrieved by the direction of the learned Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Warangal, by the order, dated 18-11-2004, in M.V.O.P. No.1176 of 2002, to deposit the compensation amount of Rs.1,74,750/- with interest at 9% per annum and later recover the same from the owner and driver of the lorry involved in the accident, this appeal is preferred seeking to set aside the same since the victim was an unauthorised passenger travelling in the goods vehicle at the relevant time.

2. The appellant herein, insurer, is respondent No.3 in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are mother and younger sister, respectively, of M. Satish, who died in the accident, are petitioners and respondent No.3 and 4, who are driver and owner, respectively, of the lorry bearing No.AP-36-U-8189, are respondent Nos.1 and 2, respectively.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal and M. Satish, who died in the accident, as

deceased.

4. The petitioner being the mother and the younger sister of
M. Satish, who died in the accident, sought a sum of Rs.3,30,000/- towards compensation under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') stating that Satish, along with other *Hamalies* (labourers), who were loading the paddy bags in the lorry bearing No.AP-36-U-8189, were sitting on the roof of the lorry cabin and since driver of the lorry drove it in a rash and negligent manner without observing the live electric lines across the road, Satish came into contact with the live electric wires and was electrocuted.

5. Respondent No.1, driver of the lorry that involved in the accident, remained *ex parte.*

6. Respondent No.2, owner of the lorry, filed counter opposing various allegations made in the claim petition.

7. Respondent No.3, insurer of the lorry, filed counter opposing the claim specifically pleading that the deceased himself contributed to the accident by travelling on the roof of the cabin of the lorry though, the same is prohibited and since the deceased was travelling in the goods vehicle, it amounts to violation of terms and

conditions of the insurance policy, and, therefore, sought to dismiss the claim petition.

8. The Tribunal, based on the pleadings, framed the following three (3) issues in order to determine compensation as well as liability including negligence in taking place of the accident.

> "(1) Whether the accident took place on account of the rash and negligent driving of the lorry bearing No.AP 36 U 8189 by its driver or due to the negligence on part of the deceased ?
>
> (2) What was the age and income of the deceased by the date of accident ?
>
> (3) Whether the petitioners are entitled to any compensation. If so, to what amount and from whom ?"

9. During enquiry, petitioner No.1, besides examining herself as PW.1, examined an eye-witness to the accident as PW.2 and marked Exs.A-1 to A-10. On behalf of the insurer, RW.1 was examined and Ex.B-1 insurance policy of the lorry involved in the accident was marked.

10. On issue No.1, the Tribunal holding that there was contributory negligence on the part of the deceased to the extent of 25%, recorded a finding to that effect placing reliance on the decisions of the Hon'ble Supreme

Court in **National Insurance Company Limited v. Baljit Kaur and others**[1], **National Insurance Company v. Sowmya and others**[2] and **National Insurance Company Limited v. Swaran Singh and others**[3], and while holding that there was violation of terms and conditions of the insurance policy, given a direction to the insurer to pay initially and later recover the same from the owner of the lorry.

11. On issue Nos.2 and 3, the Tribunal, taking the age of the mother of the deceased whose age is mentioned as 45 years in the inquest report, since the deceased died in unmarried status, selecting multiplier '15' as per Section 163-A of Schedule - II of the Act, fixed monthly earnings of the deceased at Rs.1,800/- and after deducting 1/3rd therefrom towards his personal expenses, taking the remainder Rs.1,200/- (Rs.1,800/- x 1/3 i.e., 1,800/- - Rs.600/-) towards his contribution to his family, and applying multiplier '15', arrived at Rs.2,16,000/- towards loss of dependency, apart from granting conventional amount of Rs.15,000/- towards loss of estate and Rs.2,000/- towards funeral expenses, arrived at Rs.2,33,000/- and deducting 25% therefrom towards contribution of the deceased in taking place of the accident, arrived at Rs.1,74,750/- towards compensation and granted the same directing the insurer to initially

deposit the amount and recover the same from the owner of the lorry.

12. Aggrieved by the said direction, the insurer preferred the instant appeal contending in the grounds of appeal that in view of the decisions of the Hon'ble Supreme Court in **National Insurance Company Ltd. v. Bommithi Subbhayamma and others**[4] and **M.V. Jayadevappa and others v. Oriental Fire and General Insurance Company Limited**[5]**,** insurer is not liable to pay the compensation, the direction given is unsustainable. The insurer also stated that the multiplier '15' applied by the Tribunal for the age group of petitioner No.1, who was 45 years old at the relevant time, is wrong and multiplier '10.45' ought to have applied and, thus, sought to set aside the impugned order and decree.

13. Heard Sri T. Ramulu, learned Standing Counsel for the appellant-Insurance Company, and Sri P. Prabhakar Reddy, learned counsel for respondent Nos.1 and 2-claimants. Though, notices were served on respondent Nos.1 and 2, none appears for them.

14. *Ex facie* the fact situation would reflect that the deceased was sitting on the cabin of the lorry and came into contact with the live wires and he was not authorized to board the lorry and travel in the lorry, more particularly,

on the top of the lorry. Thus, it amounts to fundamental violation of terms and conditions of the policy. The direction given by the Tribunal that the insurer should pay initially and recover the same is unsustainable in view of the ratio laid down by the Hon'ble Apex Court in **New India Assurance Company Limited v. Asha Rani and others**[6], **Baljit Kaur's** case (supra 1) and **Bommithi Subbhayamma's** case (supra 4).

15. As could be seen from the proceeding sheet on record, this Court on 04.08.2005 directed the appellant-insurer to deposit 1/3rd of the compensation amount including interest and by the order dated 27.04.2006 even the claimants were permitted to withdraw the same. Therefore, to the extent of amount deposited and withdrawn by the claimants, the appellant is at liberty to recover the same from the owner of the vehicle, respondent No.1 in the original petition. The petitioners are at liberty to recover the balance amount from the owner of the vehicle.

15. Accordingly, the instant appeal is allowed setting aside the order and decree under challenge to the extent of direction passed by the Tribunal directing the insurance company to initially pay and recover the same from the owner, while confirming the order and decree under challenge in all other aspects. There shall be no order as to costs.

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

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A. SHANKAR NARAYANA, J

29th March, 2016

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[1] **2004 ACJ 428 (SC)**

[2] **2004 (1) ALD 1999**

[3] **2004 ACJ (1)**

[4] **2005 ACJ 721 (SC)**

[5] **2005 (2) TAC 5 (SC)**

[6] **(2003) 2 SCC 223**