HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A No.2615 OF 2004

JUDGMENT:

Appellant—Insurance Company, who is the 2nd respondent among two respondents including the owner of the lorry bearing No.CRQ 7153, filed this appeal having been aggrieved by the award passed on 21.03.2002 in O.P. No.241 of 1997 on the file of Motor Accidents Claims Tribunal-cum-Additional District Judge, Anantapur (for short 'the Tribunal') originally maintained by two claimants, who are no other than husband and son of the deceased by name Fathima Bee, aged about 40 years as per Ex.A5—post mortem report dated 13.05.1997, under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') for compensation of Rs.1,00,000/-, from 1st respondent—owner remained *ex parte*, having contested, the Tribunal held that the deceased was unauthorized passenger of the goods vehicle and the insurer thereby cannot be made liable to indemnify for policy not covered the risk and since the Tribunal fixed joint liability by awarding compensation of Rs.92,088/- with interest at 9% per annum, maintained the appeal with the contentions that the Tribunal gravely erred in fixing joint liability even though the deceased was unauthorized passenger of the goods carriage and the rate of interest awarded is excessive and liable to be reduced, so also the quantum even otherwise.

2) Whereas it is the contention of the learned counsel for the claimants that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere but for no cross objections the compensation awarded is utterly low to enhance, hence to dismiss the appeal.

3) Heard learned standing counsel for appellant and learned counsel for claimants. Perused the material on record.

4) Claimant No.1 is the husband of deceased, claimant No.2, who is the son of the deceased died during pendency of the claim petition and his wife and minor children were brought on record as claimants 3 to 9. The accident was undisputedly occurred on 13.05.1997. A perusal of the record would show that the evidence of PW.1 with reference to Exs.A1 and A2 clearly shows that the deceased was not owner of the goods to cover the risk even from Act policy under Section 147 of the Act but for not a comprehensive policy to cover the risk otherwise. It is therefrom the insurer contended that the deceased, claiming as traveling in the goods vehicle, undisputedly, is unauthorized passenger. The Tribunal, however, following the expression of the Apex Court in ***New India Assurance***

Company Limited vs Satpal Singh Muchal[1] saying even for a gratuitous passenger of the goods vehicle, the insurer has to indemnify and cannot be exonerated from liability. It is impugning, the said award of the Tribunal, the insurer contends that the subsequent expression of the Apex Court in ***New India Assurance Company Limited vs Asha Rani & others***[2] that was reiterated by another Three Judge Bench by subsequent expression in ***Oriental Insurance Company Limited vs Devireddy Konda Reddy & others***[3] and later another expression in ***National Insurance Company Limited vs Ajit Kumar and others***[4] categorically held that a person traveling in a goods vehicle unless there is coverage of risk by comprehensive policy, the insurer cannot be made liable to indemnify for policy no way covers the risk and Tribunal went wrong in applying the ratio of Satpal Singh (supra) that is overruled in Asha Rani (supra), Devireddy Konda Reddy (supra) and Ajit Kumar (supra).

6) However, the fact remains that in the subsequent Three Judge Bench expression of the Apex Court in ***National Insurance Company Limited vs Baljit Kaur***[5], it is clarified that where awards are passed prior to the expression in Asha Rani (supra) based on the expression in Satpal Singh (supra) fixing joint liability on the insurer though otherwise

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[1] 2000 (1) SCC 237
[2] 2003 (2) SCC 223
[3] 2003 (2) SCC 339
[4] 2003 (9) SCC 668
[5] 2004 (2) SCC 1

insurer not liable to indemnify from the correct proposition laid down in Asha Rani (supra) from the earlier cloud in the legal position and from Asha Rani (supra) is prospective in operation that was rendered in December, 2002, the joint liability can be converted into pay and recovery by the insurer by filing execution petition without any ordeal of maintaining separate claim for recovery. As the expression in this case by the award of the Tribunal dated 21.03.2002 is prior to the Three Judge Bench expression in Asha Rani (supra) and following Satpal Singh (supra), the ratio laid down in Baljit Kaur squarely applies herein. Thereby, the insurer cannot be totally exonerated but for to pay and recover as also laid down by this Court in C.M.A No.205 of 2004 and batch vide order dated 10.06.2016.

7) Coming to the rate of interest, the Tribunal awarded interest at 9% per annum from the date of claim petition till the date of realization, which is highly excessive and exorbitant and therefore reduced to 7.5% per annum from the date of appeal till the date of realisation as per the settled expressions of the Apex Court in ***TN Transport Vs. Raja Priya***[6] and ***Rajesh Vs. Rajbir Singh***[7].

8) Accordingly and in the result the appeal is partly allowed confirming the quantum of compensation awarded by

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[6] 2005 (6) SCC 236
[7] 2013 ACJ 1403

the Tribunal and reducing the rate of interest from 9% per annum to 7.5% per annum from the date of appeal till realisation, however, converting the joint liability of the insurer and insured (respondents 1 and 2 to the claim petition) into pay and recovery with the following terms and conditions:

The Insurer—2nd respondent to the claim petition shall deposit the said amount within one month, failing which the claimants can execute and recover. It is made clear from the settled expressions of the Apex Court in ***United India Insurance Company Limited vs Lehru***[8] and ***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 claimants, if there is any necessity to permit for any withdrawal but for to

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[8] 2003 ACJ 611
[9] (2004) 13 SCC 224 = 2004 SAR (Civil) 290

invest the balance in fixed deposit in a nationalized bank. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

9) Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.01.07.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A. No.2615 OF 2004

Date:01.07.2016

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