

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1464 of 2005

JUDGMENT :

The present Civil Miscellaneous Appeal is filed by the New India Assurance Company Limited, which is the 3rd respondent in M.V.O.P.No.431 of 2000, challenging the judgment dated 24.03.2005, passed in M.V.O.P.No.431 of 2000 by the Motor Accidents Claims Tribunal (II Additional District Judge), East Godavari District, Rajahmundry (for brevity "the Tribunal"), directing the Insurance Company initially to deposit the compensation amount of Rs.2,31,000/- and recover the same from the owner of the offending vehicle.

2. The appellant is respondent No.3, respondent Nos.1 to 3 are the petitioners, and respondent Nos.4 to 6 are the driver and owner of the offending Tractor and Tractor, respectively, in M.V.O.P.No.431 of 2000. For the sake of convenience, the parties are referred to as they are arrayed in M.V.O.P.No.431 of 2000 before the Tribunal.

3. The facts in brief are, that the deceased Pilli Krishna, who was aged 24 years, earning Rs.60/- per day by working as an agricultural coolie, was travelling in a Tractor and Tractor bearing Nos.AP 16L 1163 and AP 5X 6574, respectively, when the accident had taken place on account of rash and negligent driving of its driver, due to which the said Tractor and Tractor turned upside down by the side of the canal near Kesavaram Railway Station, and the deceased fell under the goods and died instantly.

4. In the claim made by the petitioners, who are the wife and

parents of the deceased, Pilli Krishna, before the Tribunal, respondent Nos.1, 2 and 4, who are the driver and owner of the Tractor and Tractor, respectively, remained *exparte* and respondent No.3 – New India Assurance Company Limited alone contested the claim, specifically pleading that the deceased was travelling in a goods vehicle as a gratuitous passenger, but not as a coolie and that no liability can be fastened on it and that it has no obligation to indemnify the owner of the offending vehicle.

5. The Tribunal, having framed three issues and basing on the evidence of P.Ws.1 to 3, who were examined on behalf of the petitioners, and R.W.1, who was examined on behalf of the Insurance Company, and also the documentary evidence under Exs.A.1 to A.6, B.1 and B.2, though tendered a finding on Issue No.1 stating that the deceased died due to the rash and negligent driving of the driver of the vehicle; however, on issue No.2, recorded a finding that the deceased was travelling as a passenger in a goods vehicle and placing reliance on a judgment of the Hon'ble Supreme Court in PRAMOD KUMAR AGRAWAL AND OTHERS vs. SMT. MUSHTARI BEGUM AND OTHERS^[1] directed the Insurance Company initially to deposit the amount of compensation of Rs.2,31,000/- and recover the same from the owner of the offending vehicle.

6. It is the aforesaid judgment, which is under challenge in the instant Civil Miscellaneous Appeal by the New India Assurance Company Limited, contending that the Tribunal went wrong in giving such a direction, as the judgment and decree dated 24.03.2005, was rendered subsequent to the pronouncement of judgment by the Hon'ble Supreme Court in NATIONAL

INSURANCE COMPANY LIMITED vs. BALJIT KAUR^[2] and, therefore, sought to set aside the liability fastened on it.

7. Heard Sri Kota Subba Rao, learned counsel for the appellant – Insurance Company, and Sri Badana Bhaskar Rao, learned counsel for respondent Nos.1 to 3/petitioners. Respondent Nos.5 and 6, though, served with notices, none appears on their behalf. There is an endorsement in the cause title of the grounds of appeal that respondent No.4, who is the driver of the offending vehicle, is not a necessary party in this appeal.

8. Basing on the submissions made on behalf of both the parties, the only point for determination is, whether the direction given by the Tribunal can be sustained or not?

9. It is needless to mention that after the pronouncement of judgment in NEW INDIA ASSURANCE COMPANY LIMITED vs. ASHA RANI AND OTHERS^[3], certainly, for the death of an unauthorized passenger travelling in a goods vehicle, the liability cannot be fastened on the insurer. The same principle has been subsequently reiterated by the Hon'ble Supreme Court in BALJIT KAUR's case (supra 2) and NATIONAL INSURANCE COMPANY LIMITED vs. BOMMITHI SUBBAYAMMA^[4]. Therefore, the instant appeal deserves to be allowed.

10. As could be seen from the Proceeding Sheet, there has been no direction for deposit of any amount, other than the amount of Rs.25,000/- deposited at the time of admission of the appeal. In case the petitioners/respondent Nos.1 to 3 herein filed any execution petition before the Tribunal and withdrawn the amount, the appellant/Insurance Company is directed to recover the same

from the owner of the vehicle and if no amount is deposited and no amount is withdrawn and if execution proceedings are not at all initiated, the petitioners/respondent Nos.1 to 3 are at liberty to recover the compensation amount of Rs.2,31,000/- (Rupees two lakhs thirty one thousand only) along with interest and costs from the owner of the Tractor and Tractor i.e., the 2nd respondent in the original petition.

11. With the above direction, this Civil Miscellaneous Appeal is allowed. No order as to costs.

12. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

17.06.2016.

Msr

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[\[1\]](#) AIR 2004 SC 4360

[\[2\]](#) 2004 ACJ 428 (SC)

[\[3\]](#) (2003) 2 SCC 223

[\[4\]](#) 2005 ACJ 721