HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2182 OF 2005

JUDGMENT:

The instant appeal is preferred by the 2nd respondent - M/s. National Insurance Company Limited in M.V.O.P. No.1040 of 1996, aggrieved by the order, dated 11-03-2004 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, Guntur (for short 'the Tribunal'), on the ground that the Tribunal has wrongly fixed the liability on it and the interest granted by the Tribunal is on higher rate.

2. The appellant herein is the 2nd respondent, who is insurer of the mini lorry bearing registration No.AP 7T 3171, in the O.P. before the Tribunal, while respondent No.1 herein is the petitioner and Respondent No.2 is respondent No.1, who is owner of the said lorry.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 22-11-1996 at about

11.30 P.M., the petitioner was returning on a Mini lorry bearing registration No. AP 7T 3171 with 15 bags of lemons from Narasaraopet to Guntur, and when the lorry reached near Ghuttugunta, the driver of the lorry drove it in a rash and negligent manner, it hit a stationed lorry, due to which, the petitioner sustained injuries to her left leg and later it was amputated. The petitioner claimed that she was lemons vendor in vegetables market, Guntur, earning Rs.3,000/- per month and spent huge amount towards medical expenses and sustained partial permanent disability affecting her earning capacity, sought a total sum of Rs.2,00,000/- under Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short 'the Act') against respondent Nos.1 and 2, who are owner and insurer, respectively.

5. Respondent No.1, owner of the mini lorry, remained exparte.

6. Respondent No.2 opposed the claim. But, in its counter, taken a specific stand that the driver of the mini lorry was not having a valid effective driving license at the time of accident and that the vehicle was carrying passengers violating the terms and conditions of the policy and the petitioner can only be construed as an unauthorized passenger and not owner of goods and, thus, claimed to dismiss the claim petition against it.

7. The Tribunal has framed three issues about the

responsibility for the accident.

8. During inquiry before the Tribunal, the petitioner besides examining herself as PW.1, has examined Dr.M. Ramamohan Rao, as PW.2 and marked Exs.A-1 to A-9. On behalf of respondent No.2, RWS.1 and 2 were examined and Exs.B-1 to B-4 were marked.

9. Originally the Tribunal disposed of the MVOP, on which, the matter was carried to this Court preferred by the 2nd respondent – Insurance Company in AAO No.2113 of 2000. But, this Court, remitted the matter to the Tribunal with a direction to decide whether the driver of the mini lorry bearing registration No.AP 7T 3171 was having valid and effective license as on the date of accident, with a further direction to dispose of the matter within a period of eight (08) weeks from the date of order.

10. After remitting the matter, the Tribunal examined the owner of lorry, i.e. respondent No.1 as RW.3

11. Heard Sri Kota Subba Rao, learned counsel for the insurer (appellant), and Sri A. Rajendra Babu, learned counsel for the petitioner (claimant).

12. Despite service of notice, none appears for respondent No.2, insured.

13. Learned counsel for the insurer would submit

that despite examining an official of the licensing authority as RW.1 before the Tribunal, the purpose of remitting the matter to the Tribunal could not be achieved for the reason that RW.3 has not made efforts to cause production of driving licence of the driver who was employed on the date of accident. It is, therefore, his submission that the other evidence which was already taken into consideration, more particularly, the evidence of RWs.1 and 2 and the documentary evidence, Ex.B-1, an endorsement, given by the additional licensing authority, Vijayawada, shows that driving licence of Shaik Ibrahim, driver, was only renewed on 20-04-1990 to 19-07-1993 and the driving licence of the driver Shaik Ibrahim was to the effect that he was permitted to drive only light motor vehicle, and, therefore, submits that when kept in view that the O.P. was disposed of on 20.12.1999 and the remand order in CMA No.2113 of 2000 was made on 01.10.2002, the law laid down by the Hon'ble Apex Court in **National Insurance Company Limited v. Baljit Kaur and others**[1] would squarely apply and, therefore, requested to modify the order and decree directing the insurer to initially deposit the compensation granted by the Tribunal and then recover the same from the insured.

14. A perusal of the evidence of RW.3 would show that he was not inclined even to tell the name of the driver, whom he engaged and to a suggestion he denies that on

the date of accident, Shaik Ibrahim was engaged by him as driver, and that he was still owning the vehicle on the date of accident. In the cross-examination, when a question was put to him, he answers that he does not have any document to show that he sold the vehicle in question to anybody. This answer completely condemns his stand that he has sold away the vehicle in question and that he was not owning it on the date of accident. This apart, when this witness was not extending his cooperation, even it would be difficult for the Tribunal to tender any definite finding whether the driver was holding valid and effective driving licence and in that view of the matter, it is desirable to direct the insurer to initially deposit the amount granted by the Tribunal and recover the same from the insured.

15. Concerning rate of interest, the Tribunal has granted the same at 12% per annum. The insurer questioned the same stating, as against 9% per annum, the Tribunal went wrong in granting 12% per annum. Keeping in view, the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**[2]**,** the rate of interest granted by the Tribunal at 12% per annum requires reduction, and, therefore, the same is reduced to 7.5% per annum.

16. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the order and decree under

challenge as regards limited liability of the insurer, directing it to initially deposit the compensation granted by the Tribunal to the petitioner and thereafter recover the same from the insured - owner of the vehicle involved in the accident; further, the rate of interest granted by the Tribunal at 12% per annum is reduced to 7.5% per annum from the date of petition till realisation, in view of the decision of the Hon'ble

Apex Court in **Rajesh's Case** (Supra 2). There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

March 28, 2016.

PV/MGR

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

[2] **2013ACJ1403 = 2013(4)ALT35**