THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.158 OF 2009
AND
CROSS OBJECTIONS (Sr) No.11600 OF 2009

COMMON JUDGMENT:

Precisely the direction issued by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nizamabad (for short 'the Tribunal'), in his order and decree dated 10.04.2007 in O.P.No.2044 of 2001, to the Insurance Company to deposit the compensation amount initially and recover the same from the owner of the offending vehicle, is under challenge in the instant appeal preferred by the Insurance Company –respondent No.2 in the said O.P., on the ground that such a direction cannot at all be issued in view of the law declared by the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani and others**[1], **National Insurance Company Ltd., v. Baljit Kaur and others**[2] and **National Insurance Company Limited v. Bommithi Subbayamma**[3].

2. Even the petitioner - claimant in the said O.P., has preferred the present Cross Objections, seeking enhancement, precisely, on the ground that the compensation awarded by the Tribunal is inadequate and unjust.

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[1] (2003) 2 SCC 223
[2] 2004 ACJ 428 (SC)
[3] 2005 ACJ 721

3. The appellant – New India Assurance Company Limited represented by its Divisional Manager, Nizamabad, in the present appeal, who is respondent No.1 in the cross objections, is respondent No.2, while respondent No.1 in the appeal, who is the cross objector, is the petitioner in the O.P. before the Tribunal. Respondent No.2 in both the appeal and the Cross Objections, who is owner of the tractor, is respondent No.1 in the O.P. Since respondent No.1 in the present appeal, who is the petitioner in the O.P., died during pendency of the appeal, his legal representatives are brought on record as respondent Nos.3 and 4 in the appeal.

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

5. The fact-situation is not in dispute, but, however, the relevant facts are that the petitioner (since died) hired a tractor bearing registration No. AP 25 E 8737, owned by respondent No.1 in the O.P., on 31.07.2000, so as to plough his fields and, at about 4.00 p.m., while he was proceeding in the said tractor towards his agricultural fields by sitting by the side of the driver, and when the tractor was crossing the bund in the fields of one Kashaiah of the same village, the driver drove the tractor in a rash and negligent manner, as a result of which, the tractor turned upside down and the petitioner initially received crush injuries to his left leg and later his left leg was amputated.

6. The Tribunal, having framed relevant issues and by examining P.Ws.1 to 3 and marking Exs.A1 to A9 and Ex.C1-xerox copy of admission register of the Hospital concerned, on behalf of the petitioner; and examining R.W.1 and marking Exs.B1 and B2 on behalf of the Insurance Company, deliberated on the evidence of both parties and determined the compensation at Rs.2,50,000/- under various heads mentioned in paragraph 16 of the order. However, the Tribunal, holding that there has been fundamental violation of the terms and conditions of the policy, as the petitioner was travelling as an unauthorized passenger, directed the Insurance Company to initially deposit the amount and recover the same from the owner of the offending tractor.

7. Though, the Tribunal directed the Insurance Company to satisfy the award initially and recover the same from the owner, the Insurance Company feels aggrieved by the same and filed the present appeal challenging that direction on the ground that no liability can be fastened on it for the reason that the tractor was insured for agricultural purpose and the petitioner was not supposed to travel in the said tractor by sitting beside the driver and, therefore, the petitioner had to be construed as an unauthorized passenger.

8. Heard Smt. Kalpana Ekbote, learned counsel for the appellant, and Sri V.Satyam Reddy, learned counsel for respondent

Nos.3 & 4 in the appeal. Despite service of notice on Respondent No.2, owner of the vehicle, none entered appearance.

9. Learned counsel for the appellant has pointed out the violations mentioned above and sought to set aside the said direction.

10. Per contra, learned counsel for respondent Nos.3 & 4 in the appeal would contend that the catena of judgments rendered by this Court and the Hon'ble Supreme Court would clearly show that such a direction can be issued, as the same is approved. He placed reliance on the decision of this Court in **Pandu Balamani and others v. B.Gangaram and another**[4].

11. In fact, in the decisions placed before this Court, including the judgment rendered by me in **Oriental Insurance Co. Ltd., Hyderabad v. Tadi Lova Raju**[5], it was recorded that for gratuitous passenger, such a direction can be issued, but, however, the same was revived in subsequent appeals. The decision of the Hon'ble Apex Court in **New India Insurance Company v. Darshana Devi & others**[6] was rendered in exercise of jurisdiction under Article 142 of the Constitution of India. The same has been confirmed in subsequent decisions rendered by the Hon'ble Supreme Court as to such a power was exercised under Article 142 of the Constitution of India. Therefore, the decision, on

[4] 2016 (3) ALD 89
[5] 2014 (3) ALD 601
[6] (2008) 7 SCC 416 = 2008 ACJ 1388

which reliance is placed by the learned counsel for respondent Nos.3 & 4 in the appeal, would not render any assistance to maintain the direction given by the Tribunal, for the reason that in the cases of **Asha Rani, Baljit Kaur** and **Bommithi Subbayamma**[7], the Hon'ble Supreme Court held that a gratuitous passenger is not entitled to claim any compensation from the Insurance Company and no liability arises so far as the Insurance Company is concerned. Therefore, there is every merit to allow the appeal and, accordingly, the appeal is allowed setting aside the order and decree passed by the Tribunal so far as mulcting liability on the Insurance Company initially is concerned.

12. Concerning the cross-objections, since the petitioner died during pendency of the appeal and his legal representatives are brought on record as respondent Nos.3 and 4, whatever amount awarded by the Tribunal to the petitioner towards compensation becomes the estate in the hands of respondent Nos.3 and 4 and, certainly, they are not entitled to seek enhancement of compensation. Therefore, there is no merit in the cross-objections and the same is, accordingly, dismissed.

13. A perusal of the order, dated 24.10.2008, passed in MACMA.MP.No.7050 of 2008 in the present appeal, would reflect that interim stay was granted on condition that the Insurance Company deposits half of the compensation amount awarded by the Tribunal,

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[7] 2005 ACJ 721

including interest and costs, after duly giving credit to the amount, if any already deposited, within a period of six weeks from the date of the order. Admittedly, the said order is complied with. Subsequently, by order dated 10.02.2009, in MACMA.MP.No.370 of 2009, permission was granted to the vacate petitioner to withdraw the deposited amount without furnishing any security. It is not in dispute that the said amount is already withdrawn. Therefore, it would be reasonable to observe that the Insurance Company is at liberty to recover the same from the owner of the vehicle. It is open to the legal representatives of the deceased petitioner to recover the balance amount from the owner of the vehicle, who is respondent No.1 in the O.P., incidentally respondent No.2 in the present appeal filed by the Insurance Company.

14. Thus, the appeal is allowed and Cross Objections filed by the claimant is dismissed.

15. Miscellaneous Petitions, if any pending in these cases, shall stand closed. No costs.

A. SHANKAR NARAYANA, J

27.08.2016
v v