HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Miscellaneous Appeal Nos. 2756, 2757 and 2758 of 2004

COMMON JUDGMENT:

The 2nd respondent – The United India Insurance Company Limited - in Original Petition Nos.17, 18 & 15 of 1997, is the present appellant.

2. Aggrieved over the common order, dated 22.12.2003, passed in Original Petition Nos.17, 18 & 15 of 1997, all these three appeals have been preferred by the 2nd respondent-Insurer under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') on the ground that the amounts of Rs.18,000/- as against Rs.40,000/- in O.P. No.17 of 1997; Rs.20,000/- as against Rs.50,000/- in O.P. No.18 of 1997; and Rs.15,000/- as against Rs.40,000/- in O.P. No.15 of 1997 respectively, on the file of the Chairman, Motor Accidents Claims Tribunal (Additional Sessions Judge), Anantapur, in the claim petitions laid under Section 140 and 166 of the Motor Vehicles Act, 1988, for the injuries they sustained when Lorry bearing No.AP-02-T-6676, in which they were travelling, met with an accident on account of rash and negligent driving of the driver of the vehicle it was dashed against a pedestrian and lost control over the lorry were very meagre.

3. Heard Smt. S.A.V. Ratnam, learned counsel for the appellant in all these Civil Miscellaneous Appeals. So far as respondent No.1 is concerned, though, service was completed, none

appears and so far as respondent No.2 is concerned though entered appearance, none appears. So far as the respondent No.1 in C.M.A. No.2757 of 2004 is concerned, appeal was dismissed for default on 23.9.2011, but the said dismissal is of no consequence in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**[1]**,** and though process was completed on 2nd respondent, none appears. So far as respondent No.1 is concerned in CMA No.2758 of 2004 though process was completed, none appears.

4. The facts are not in dispute. The petitioners sustaining injuries and getting treated are also not in dispute.

5. The only dispute is that the petitioners themselves were travelling in the said vehicle and in view of the law declared by the Hon'ble Apex Court in **New India Assurance Company Limited v. Asha Rani**[2] they are not entitled to any compensation as they cannot be treated as third parties. Of course, it is clear that the Hon'ble Supreme Court in **National Insurance Company Limited v. Baljit Kaur and others**[3], clarified in paragraph-21 thus.

> "21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High

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[1] 2001(1) ALT 495 (D.B.)
[2] (2003) 2 SCC 223
[3] 2004 ACJ 428 (SC)

Court had proceeded in terms of the decision of this Court in *New India Assurance Co. v. Satpal Singh (2000) 1 SCC 237*. The said decision has been overruled only in *New India Assurance Co. Ltd. v. Asha Rani (2003) 2 SCC 223*. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

6. In view of this, orders were rendered after the law declared by the Hon'ble Supreme Court in **Asha Rani** (2 supra) and before the clarification was made in **Baljit Kaur** (3 supra), insurer is directed, initially, to pay the compensation amount and recover the same from the owner of the vehicle.

7. Accordingly, all these Civil Miscellaneous Appeals are disposed of observing that the Insurer shall pay the compensation initially and recover the same from the owner of the vehicle. In case any amounts were already deposited in these claim petitions, the appellant/insurer shall deposit the balance compensation amount and at liberty to recover the same from the owner of the vehicle i.e.,

1st respondent in O.P. Nos. 17, 18 & 15 of 1997. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in these Civil Miscellaneous Appeals shall stand closed.

A. SHANKAR NARAYANA

Dt. 19.09.2017
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