

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.4531 OF 2004

JUDGMENT:

Heard Sri R.K. Suri, learned standing counsel for the appellant viz., National Insurance Company Limited - respondent No.3 in O.P. No.145 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - District Judge, West Godavari District, Eluru, and Sri N. Venkateswara Rao, learned counsel for respondent No.1 - petitioner - claimant.

2. The learned Standing Counsel would submit that the law is well settled pursuant to the ruling in **New India Assurance Company Limited v. Asha Rani**¹, which is further crystalised with the clarification by the Hon'ble Apex Court in **National Insurance Company Limited v. Baljit Kaur**², which the learned counsel for respondent No.1 - claimant would completely agree submitting that the liability ought not to have fastened on the insurance company in view of the legal principles laid down in both the decisions referred to above.

3. Therefore, there is no need to probe into except the direction given by the Tribunal initially to pay and recover to be set aside. Accordingly, the order and the decree under challenge so far as respondent No.2 insurance company, who is the present appellant is

¹ (2003) 2 SCC 223 FB

² [2004 (1) ALD 98 (SC)]

concerned, is modified allowing the present appeal exonerating it from payment of compensation awarded by the Tribunal.

4. The amount, if any, deposited by the appellant is still lying to the credit of the appeal/O.P., the appellant is entitled to seek return of the same. It is open to the petitioner - claimant - respondent No.1 to proceed against the owner of the lorry that involved in the accident, for recovery of the amount granted by the Tribunal with interest thereon as directed.

5. Accordingly, the Civil Miscellaneous Appeal is allowed modifying the impugned judgment and the decree dated 29.07.2004 by exonerating the appellant - insurer from the liability to pay compensation to the claimant, as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

October 6, 2017.

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