THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2295 of 2004

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred questioning the award and decree, dated 15.06.2004, in O.P.No.1139 of 2000 passed by the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District & Sessions Judge (Fast Track Court), Ranga Reddy District at L.B.Nagar (for short, 'the Tribunal'), whereby and whereunder while granting compensation of Rs.1,00,000/-, the Insurance Company was exonerated from the liability.

2. The appellants herein are the petitioners, while respondent Nos.1 and 2, who are the owner and the insurer of the DCM van bearing registration No. AP 11 V 3291, are respondent Nos.1 and 2, respectively, in the original petition.

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

4. The fact-situation would show that on 08.10.2000 at about 7.00 p.m, while one B.Ramesh (deceased), who was aged 13 years, along with others was travelling in a goods vehicle i.e., DCM van bearing No. AP 11 V 3291, from Bazaeghat to Tankbund for procession of Durga Mata, the driver of the vehicle drove the vehicle in a rash and negligent manner, due to which the deceased fell down from the vehicle

and the vehicle ran over him, resulting in his death in Osmania General Hospital, Hyderabad, to which he was shifted.

5. Before the Tribunal, the owner of the vehicle did not contest the case by filing the counter, but the insurer contested the claim stating that the DCM van, in which the deceased was travelling, was a goods vehicle and the deceased was travelling as an unauthorised passenger and, therefore, no liability can be fastened on the insurer.

6. The Tribunal, having framed three issues, examined PWs.1 and 2 and marked ExA1 to A7 on behalf of the petitioners and examined RW.1 and marked Ex1.B1 on behalf of the respondents and arrived at the conclusion that no liability can be fastened on the Insurance Company by examining the provisions of Section 147 (1) of the Motor Vehicles Act. In regard to the compensation, the Tribunal determined it at Rs.2,25,000/- and, after deducting 1/3rd thereof, arrived at Rs1,50,000/- as compensation. But, since the claim was only for Rs.1,00,000/-, the Tribunal restricted the compensation to Rs.1,00,000/- with interest at 9% per annum.

7. Heard Sri Pottigari Sridhar Reddy, learned counsel for the appellants, and Sri A.V.K.S.Prasad, learned counsel for respondent No.2.

8. So far as respondent No.1 is concerned, the present appeal was dismissed for default by the order dated 19.11.2015.

9. In fact, the Tribunal went wrong in deducting 1/3rd towards personal expenses. Since the deceased was 13 years old at the time of accident, the question of married status does not arise in his case. The Tribunal ought to have deducted 50% rather than 1/3rd, in which event, it ought to have arrived at Rs.1,12,500/-, to which the claimants are entitled. Of course, the compensation was restricted to Rs.1,00,000/-, as the claim of the petitioners was for Rs.1,00,000/- only. However, there is no embargo for granting the amount to which the claimants are entitled, even if it exceeds the amount claimed. In this regard, there is no need to refer to the decisions, as it is well settled now. So far as liability is concerned, no liability can be fastened on the Insurance Company in view of the decision of the Hon'ble Supreme Court in **National Insurance Company Limited v. Savitri Devi and others**[1].

10. Thus, the petitioners are entitled to a sum of Rs.1,12,500/- (Rupees One lakh twelve thousand five hundred only) towards compensation, as against Rs.1,00,000/- granted by the Tribunal, and the same is, accordingly, granted. However, the petitioners are directed to pay the court fee on the excess amount i.e., Rs.12,500/-, within a period of three months from today, to the credit of the O.P.

11. Learned counsel for the appellants, no doubt, sought to order pay and recovery basing on **National Insurance Company Ltd., v.**

[1] (2013) 11 SCC 554

Baljit Kaur and others[2], but, certainly, this Court is not empowered to exercise the extra-ordinary power under Article 142 of the Constitution of India.

12. So far as the rate of interest is concerned, the interest awarded by the Tribunal is confirmed.

13. The enhanced amount is directed to be apportioned in proportion to the apportionment made to the petitioners by the Tribunal.

14. Accordingly, the instant appeal is party allowed modifying the order passed by the Tribunal by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

JUSTICE A.SHANKAR NARAYANA

01.08.2017
v v

[2] 2004 ACJ 428 (SC)