**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**M.A.C.M.A. No.1348 OF 2009**

**JUDGMENT:**

The present Appeal is preferred questioning the liability cast on the National Insurance Company Limited, which is figuring as 3rd respondent in O.P. No.36 of 2005, by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Eluru, West Godavari District, to pay a sum of Rs.3,92,000/- for the death of one Pasupuleti Prabhakararao @ Yesu on the main ground that the Tribunal overlooked the fact that the deceased was unauthorized passenger travelling on the Goods Vehicle (Mini Van) bearing No. AP-37-W-1269.

2. The fact situation would reflect that the respondents 1 to 5, who are the wife, minor children and parents of the deceased, laid claim of Rs.4,00,000/- under Section 166 of the Motor Vehicles Act against the driver, owner and insurer.

3. According to them on 10.9.2004 night, the deceased along with another merchant loaded vegetable bags in a Mini Van bearing No.AP-37-W-1269 at Madras for transporting the same to Tanuku and Rajahmundry markets and they also boarded the said Mini van along with goods and while it was proceeding towards its destination on 11.9.2004 at 2.00 a.m. and when reached Hanuman Junction, the driver since drove it rashly and negligently dashed a

lorry which was going ahead, on account of which the deceased and cleaner of the Mini Van sustained injuries and died instantly. The claimants 1 to 5 are depending on the income of the deceased and they lost their breadwinner, and therefore, they filed claim petition.

4. All the three respondents contested the claim. The 1st respondent pleaded that due to rash and negligent driving of the driver of lorry only, accident took place. The 2nd respondent took the same plea, besides stating that since the 1st respondent was holding valid driving license and the vehicle was having valid permit at the time of accident, he is not liable to pay compensation. The 3rd respondent - Insurer, while raising various pleas strongly averred that no documents, such as trip sheet or way bill, are produced to prove that the deceased was doing vegetable business and earning Rs.6,000/- per month and the petition is bad for non-joinder of parties and the compensation claimed by the petitioners are on higher side and there is violation of conditions of policy and, therefore, sought to dismiss the claim petition.

5. The learned Chairman framed four issues for trial. During enquiry, the 1st petitioner herself examined as P.W.1 and one Sundara Venkateswararao as P.W.2 and marked Exs.A1 to A6. On behalf of the respondents, one J. Vijayakumar was examined as R.W.1 and A.V. Krishna Rao, Senior Assistant of 3rd respondent's office,

was examined as R.W.2 and marked Exs.B1 to B6, besides marking Exs.X1 and X2 through witness.

6. The learned Chairman, on appreciation of evidence, held issue No.1 in favour of the petitioners. So far as the age of the deceased is concerned, fixing the age at 26 years and earnings at Rs.2,500/- per month, deducted one-third towards personal and living expenses and the net contribution to the family at Rs.20,000/- per annum, applying the multiplier '18' as per Schedule-II of Section 163-A of the Motor Vehicles Act, arrived at Rs.3,60,000/- towards loss of earnings besides a sum of Rs.15,000/- towards loss of consortium, a sum of Rs.15,000/- towards loss of estate and a sum of Rs.2,000/- towards funeral expenses, thus totaling Rs.3,92,000/- with interest at 7.5% p.a. from the date of petition till payment.

7. Having apportioned the amount, touching liability, the learned Chairman recorded a finding that the evidence on record clearly shows that the deceased was owner of goods and, therefore, the respondents 1 to 3 jointly and severally liable to pay the compensation.

8. Aggrieved of the same, the 3rd respondent - Insurance Company filed the present Appeal under Section 173 of the Motor Vehicles Act contending that the Tribunal below failed to see that there is no liability to pay compensation by the insurer when the

deceased was not travelling as the owner of goods and he is only an unauthorized passenger and there is no documentary proof that the deceased was travelling along with goods and, therefore, sought to set aside the award under appeal and exonerate from liability.

9. Heard Sri Kota Subba Rao, the learned counsel for the appellant-Insurance Company, Sri I. Gopala Reddy, the learned counsel for the respondents 1 to 5 and Sri K. Jothi Prasad, the learned counsel for the respondent No.7. It is endorsed on the cause title that respondent No.6 is not a necessary party.

10. The learned standing counsel for the appellant would fairly concedes that the deceased - Pasupuleti Prabhakara Rao @ Yesu was travelling with goods according to the complaint as well as charge sheet and, accordingly, a finding was recorded by the Tribunal holding that the deceased was travelling in the Light Goods Vehicle, which is accident vehicle as owner of the goods, when it met with accident leading to the death of the deceased. In such an event, there is no controversy available for adjudication except to confirm the order and decree passed by the Tribunal, even the rate of interest at 7.5% per annum.

11. Hence, confirming the order and decree, dated 08.09.2005, passed by the Tribunal in O.P. No.36 of 2005 in entirety, the present appeal is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in this appeal, stand disposed of.

**A. SHANKAR NARAYANA, J**

**August 16, 2017.**
GBS/Mgr