HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. M.P. No.15481 OF 2004

IN/AND

CIVIL MISCELLANEOUS APPEAL No.2159 OF 2004

COMMON JUDGMENT:

The present Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988, by the insurance company viz., The Oriental Insurance Company Limited, City Branch Officer, Madras, is directed against the order and decree dated 13.06.2003 in O.P. No.527 of 1997 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Ongole.

2. In fact, by the order dated 24.11.2004 in C.M.A. M.P. No.15481 of 2004, a report was called for from the Principal District Judge's Court, Ongole, to ascertain whether the petitioners in the said application are legal representatives of the deceased respondent No.1.

3. Having conducted enquiry, the learned District Judge submitted a report stating that the petitioners in C.M.A. M.P. No.15481 of 2004 are the legal representatives of the deceased respondent No.1, Bandaru Basavaiah. But, the registry, on receipt of the report, has not incorporated their names in the cause title of the appeal as legal representatives of the deceased respondent No.1. Therefore, C.M.A. M.P. No.15481 of 2004 is allowed directing the registry to incorporate the names of the petitioners in the cause title of

the present appeal, as legal representatives of the deceased respondent No.1 Bandaru Basavaiah, as respective respondents.

4. Now, the short question that requires consideration is whether the compensation amount awarded by the Tribunal at Rs.2,57,600/- for the injuries sustained by the deceased respondent No.1 by directing the insurer, who is the appellant herein, to initially deposit and recover the same from the insured, respondent No.2 herein, who is the owner of the vehicle can be maintained?

5. The learned Tribunal having placed reliance in **New India Assurance Company Limited v. Kamla & others** [2001 ACJ 843], observing that though, there were violations of conditions of the insurance policy, the insurer is liable to pay the compensation and in turn recover the same from the insured, and applying the law laid down by the Hon'ble Supreme Court, such a direction was given to the insurer to deposit the compensation awarded within three (3) months from the date of the order and thereafter to recover the said amount from the insured.

6. The said order was rendered on 13.06.2003, which is admittedly after the decision of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani**[1], rendered on 03.12.2002, where liability of the insurance company is exonerated in case of gratuitous passengers or fare paid passengers travelling in a goods vehicle.

7. In **M/s. National Insurance Company Limited v. Baljit Kaur**[2], the Hon'ble Supreme Court, by the judgment dated 06.01.2004, further clarified the decision rendered in **Asha Rani**[1], in paragraph No.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 Court had proceeded in terms of the decisions of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be sub- served 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 not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or

[1] (2003) 2 SCC 223
[2]

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."

8. When viewed in the context of the law laid down by the Hon'ble Supreme Court in **Baljit Kaur**[2], the order passed by the Tribunal directing the insurer to pay the compensation initially and thereafter to recover the same from the insured, owner of the vehicle, who is respondent No.2 in the present appeal, cannot be faulted as the order under challenge was rendered subsequent to the decision rendered by the Hon'ble Supreme Court in **Asha Rani**[1] and before the decision in **Baljit Kaur**[2]. The other grounds agitated by the insurer are without any merit. Hence, non-issuance of notices to the legal representatives of the deceased respondent No.1 would not affect merits of the case.

9. Therefore, the Civil Miscellaneous Appeal is dismissed. 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

September 1, 2017.

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