

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Miscellaneous Appeal No.3180 of 2004

JUDGMENT:

Heard Smt. S.A.V. Ratnam, learned Standing Counsel for the appellant-The Oriental Insurance Company Limited and Sri P. Radhive Reddy, learned counsel for the respondents 1 to 7. In fact, the present Appeal is dismissed for default against the respondent Nos.8 & 9 vide Court order, dated, 8.2.2016.

2. There is no dispute in regard to the fact situation between both sides. Admittedly, the deceased was travelling as 'unauthorised passenger' though he was traveling along with goods for the reason that P.W.2's evidence would clearly show that the fare of Rs.5/- was paid by him at the time of boarding the lorry in the midway. The present order, dated 16.10.2002, passed prior to the decision in **National Insurance Company Limited v. Baljit Kaur and others¹**, rendered by the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court makes it clear that the insurer is directed, initially, to pay the compensation amount and recover the same from the owner of the vehicle. When, the fact situation is appreciated in the light of the evidence on record, certainly, it is to be held that the deceased was traveling as 'gratuitous passenger' since the fare was paid, but not as 'owner of the goods'.

¹ 2004 ACJ 428 (SC)

3. Since the present order was rendered on 16.10.2002 by the learned Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad, and, thus, it was prior to the law laid down by the Hon'ble Supreme Court in **Baljit Kaur** (1 supra), instead of fixing absolute liability on the appellant-Insurance Company, the same is modified, initially, directing to pay the compensation amount by the Insurer and recover the same from the owner of the vehicle i.e., 8th respondent herein.

4. So far as determination of compensation is concerned, though the learned counsel for the appellant insisted in the Grounds of Appeal that the formula evolved by this Court in **Bhagwan Das v. Mohd. Arif** ² ought to have resorted to, but cannot be accepted for the reason that the present Appeal has been pending even before rendering the decisions in **Sarla Verma v. Delhi Transport Corporation** ³ and in **Rajesh v. Rajbir Singh** ⁴.

5. In that view of the matter, the compensation awarded by the Tribunal cannot be considered as neither 'excessive' nor 'exorbitant'.

6. Accordingly, the Civil Miscellaneous Appeal is allowed to the extent indicated in the above observing that the Insurer shall pay the compensation initially and recover the same from the owner

² 1987 ACJ 1052 = 1987 (2) ALT 137

³ 2009 ACJ 1298 (SC)

⁴ (2013) 9 Supreme Court Cases 54

of the vehicle. In case any amount is already deposited in the claim petition the appellant/insurer shall deposit the balance compensation amount and at liberty to recover the same from the owner of the vehicle i.e., 8th respondent – Syed Samad. There shall be no order as to costs.

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

Dt. 11.10.2017
gbs

A. SHANKAR NARAYANA

