THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A.Nos.1801 and 1854 of 2004

COMMON JUDGMENT:

Aggrieved by the Awards in MVOP Nos.278 and 464 of 2000 passed by the Chairman, Motor Accidents Claims Tribunal, Vijayawada (for short "the Tribunal"), the 3rd respondent in the O.Ps/Insurance Company preferred CMA Nos.1854 and 1801 of 2004 respectively.

2) The parties in both the appeals are referred as they were arrayed before the lower Tribunal.

3) The Tribunal awarded compensation to the petitioners in the aforesaid O.Ps, who were injured while travelling in the offending lorry bearing No.AP 7 V 5119. Despite the contention of the Insurance Company that those petitioners were gratuitous passengers in a goods vehicle, the Tribunal fixed liability on the Insurance Company jointly and severally along with respondents 1 and 2, who are the driver and owner of the offending lorry.

Hence the instant appeals by Insurance Company.

4 a) **CMA No.1801 of 2004:** Heard arguments of Sri Kota Subba Rao, learned counsel for appellant/Insurance Company. Notices sent to respondents 1 and 2 were returned unserved. There is no representation for respondent No.3.

b) **CMA No.1851 of 2004:** Heard arguments of Sri Kota Subba Rao, learned counsel for appellant/Insurance Company. Case against respondents

1 and 2 was dismissed for default vide Court Order dated 23.09.2011. There is no representation for respondent No.3.

5) The main plank of argument of learned counsel for appellant is that on the own admission of the claimants in both the O.Ps, they travelled in the offending lorry as fare paid passengers in contravention of terms of the policy and therefore, their risk was not covered under the terms of the policy and despite the same, the Tribunal instead of granting compensation against the owner and driver alone, fixed liability on Insurance Company also. Learned counsel placed reliance on the decision reported in ***New India Assurance Company Limited vs. Asha Rani and others***[1] and argued that in view of the settled law, the risk of a gratuitous or unauthorised or fare paid passenger is not covered. He thus prayed to allow the appeals.

6) In the light of above arguments, the point for determination is:

"Whether the Awards passed by the Tribunal are factually and legally sustainable?"

7) **POINT**: A perusal of the record would show that admittedly the claimants travelled in the ill-fated lorry as fare paid passengers and got injured when the iron roads staked in the lorry fell on them. Therefore, the claimants were only fare paid passengers with reference to the crime lorry. As can be seen, the 3rd respondent in the O.Ps/Insurance Company raised plea that since the petitioners travelled in the ill-fated lorry as gratuitous passengers in contravention of the terms of the policy, their risk would not be

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[1] 2002 (8) Supreme 594

covered and the Insurance Company cannot be fastened with liability. However, the Tribunal discarded the said plea relying on the judgment reported in ***National Insurance Co. Ltd. vs. Baljit Kaur and others***[2] and fixed liability on all the respondents including the Insurance Company. It must be said that the Awards suffer legal infirmity since the lower Tribunal failed to comprehend the purport of the ratio in ***Baljit Kaur***'s case (2 supra). In ***Baljit Kaur***'s case (2 supra), Hon'ble Apex Court while observing that the risk of a gratuitous passenger in a goods vehicle will not be covered under the terms of policy, made further observation as follows:

> *"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 subserved 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."*

8) Therefore, the above observation made on equitable grounds applies only to limited cases i.e, those cases where, basing on ***New India Assurance Company vs. Satpal Singh and others***[3] which was by then a law, if compensation was granted to a gratuitous passenger in a goods vehicle against Insurance company and the appeal carried out by the Insurance company is allowed basing on ***Asha Rani***'s case (1 supra), in such circumstances though Insurance company is exonerated by virtue of ***Asha Rani***'s case (1 supra), still it can be directed to pay compensation at first and

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[2] 2004 (1) ALD Pg.98 (SC) = (2004) 2 SCC 1
[3] AIR 2000 Supreme Court 235 (1)

then recover the same from the owner/insured. Hence, the pay and recovery direction given in ***Baljit Kaur***'s case (2 supra) would not be applicable to other cases.

9) The present cases are concerned, the Tribunal passed the Awards in MVOP No.278 of 2000 on 01.04.2004 and in MVOP No.464 of 2000 on 01.05.2004, whereas the judgment in ***Asha Rani***'s case (1 supra) was rendered on 03.12.2002 i.e, much prior to the passing of aforesaid Awards. As such, the Tribunal in view of the ***Asha Rani***'s case (1 supra), could not have passed even a pay and recover direction against the Insurance Company muchless, fixing full-fledged liability against it. Therefore, the Awards suffer legal infirmity to the extent of fixing liability on Insurance Company.

10) In the result, both the CMAs are allowed and the appellant/3rd respondent in the O.Ps/Insurance Company is exonerated from liability. However, the respondents 1 and 2 in the O.Ps i.e, driver and owner are held jointly and severally liable to pay compensation. It is made clear that pending appeals if the Insurance Company has deposited any compensation and withdrawn, it shall recover the same from the respondents 1 and 2 in the O.Ps but not from the claimants. No order as to costs in both the appeals.

As a sequel, miscellaneous applications pending, if any, in both the appeals shall stand closed.

U. DURGA PRASAD RAO, J

Date: 27.01.2017

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