THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL Nos.4588 & 4620 of 2004

COMMON JUDGMENT:

Since these two appeals arise from one and the same accident, they are being disposed of by this common judgment.

Both these appeals are preferred by the insurer - National Insurance Company Limited represented by its Branch Manager, Warangal, aggrieved over separate orders and decrees, dated 23.07.2004, passed in M.V.O.P.Nos.370 of 2001 and 364 of 2001, respectively, by the learned Chairman, Motor Accident Claims Tribunal – cum – III Additional District Judge, Warangal (for short, 'the Tribunal'), awarding a sum of Rs.3,18,000/- in each of these two O.Ps and directing the insurer to initially deposit the amount and recover the same from the owner-insured by appropriate proceedings.

The appellant in both these appeals is respondent No.3 in the said O.Ps. Respondent Nos.1 to 5 in CMA.No.4588 of 2004 are the claimants in M.V.O.P.No.370 of 2001, while respondent Nos.1 to 4 in CMA.No.4620 of 2004 are the claimants in M.V.O.P.No.364 of 2001. Further, respondent Nos.6 and 7 in CMA.No.4588 of 2004, who are the driver and owner, are respondent Nos.1 and 2, respectively, in M.V.O.P.No.370 of 2001, whereas respondent Nos.5 and 6 in CMA.No.4620 of 2004, who are the driver and owner, are respondent Nos.1 and 2, respectively, in M.V.O.P.No.364 of 2001.

For the sake of convenience, the parties herein are referred to as they were arrayed in the O.Ps before the Tribunal.

Heard Sri Ramchandra Reddy Gadi, learned counsel for the appellant – insurer, and Sri Ramachandra Rao Vemuganti, learned counsel for respondent No.7 in CMA.No.4588 of 2004 and respondent No.6 in CMA.No.4620 of 2004, who is the insured - owner of the offending vehicle in both O.Ps.

The grievance of the appellant is that the orders of the Tribunal directing it to initially deposit the amount and recover the same from the owner are illegal and against the law laid down by the Hon'ble Apex Court in a catena of decisions.

There is no dispute in regard to the findings recorded by the Tribunal that the deceased in both the cases were traveling as gratuitous passengers. The said finding is not assailed by the claimants.

Learned counsel for the owner - insured placed reliance in a decision of the Hon'ble Apex Court in **Manuara Khatun and others** v. **Rajesh Kr. Singh and others**[1], wherein, the Hon'ble Apex Court, in the context of the claim laid by the legal representatives of the gratuitous passenger, opined that the insurer of the offending vehicle can be directed to pay the awarded sum to the claimants and recover the same from the insured – owner of the offending vehicle applying the principle laid down in **Manager, National Insurance Company Limited** v. **Saju P. Paul and another**[2].

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[1] 2017 (2) ALD 65 (SC)
[2] 2013 (2) ALD 95 (SC)

Now, the short question that arises for consideration is whether the orders under challenge cannot be sustained?

Learned counsel for the insured would submit that this Court has got power of fixing initial liability on insurer when the legal heirs of gratuitous passengers would claim compensation. In **Manuara Khatun** (1 supra), the Hon'ble Apex Court, in paragraph '17', extracted the observations made in **Saju P. Paul** (2 supra) thus:

> "20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the insurance company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (respondent no. 2 herein).
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> 26. The pendency of consideration of the above questions by a Larger Bench does not mean that the course that was followed in **National Insurance Co. Ltd. v. Baljit Kaur and others** [(2004) 2 SCC 1] and **National Insurance Co. Ltd. v. Challa Upendra Rao and others** [(2004) 8 SCC 517] should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1.8.2011 (**National Insurance Co. Ltd. v. Saju P. Paul**, (supra) and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (respondent 2

herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in **Challa Upendra Rao**'s case (supra)."

In the aforesaid decision, the Hon'ble Apex Court has observed that in case where typical situation would occur or special circumstances come into fore, as mentioned therein, 'pay and recover' can be ordered.

In the present context, the expression of the Hon'ble Supreme Court in paragraph Nos.24 and 25 of the judgment rendered in **Saju P. Paul** (2 supra) is apt to refer to thus:

> "24. In National Insurance Co. Ltd. v. Parvathneni and Anr. [SLP (C)... CC No. 10993 of 2009], the following two questions have been referred to the larger Bench for consideration:
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> (1) If an Insurance Company can prove that it does not have any liability to pay any amount in law to the claimants under the Motor Vehicles Act or any other enactment, can the Court yet compel it to pay the amount in question giving it liberty to later on recover the same from the owner of the vehicle.
>
> (2) Can such a direction be given under Article 142 of the Constitution, and what is the scope of Article 142? Does Article 142 permit the Court to create a liability where there is none?
>
> 25. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in *Baljit Kaur* MANU/SC/2009/2004: (2004) 2 SCC 1 and *Challa Bharathamma* MANU/SC/0779/2004 : (2004) 8 SCC 517 should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, claimant was 28 years' old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The insurance company has already deposited the entire awarded amount pursuant to the order of this Court

> passed on 01.08.2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent No. 1) may be allowed to withdraw the amount deposited by the insurance company before this Court along-with accrued interest. The insurance company (Appellant) thereafter may recover the amount so paid from the owner (Respondent No.2 herein). The recovery of the amount by the insurance company from the owner shall be made by following the procedure as laid down by this Court in the case of *Challa Bharathamma* MANU/SC//0779/2004 : (2004) 8 SCC 517."

Such power is not vested with this Court.

Hence, both these appeals are allowed setting aside the orders under challenge to the extent of the liability fastened on the insurer by the Tribunal, while confirming the same in all other respects.

Since it is represented that 50% of the awarded amount was already deposited and the same was withdrawn by the claimants without furnishing security as per the orders passed by this Court in relevant applications, the insurer is at liberty to recover the amount withdrawn by the claimants from the owner of the vehicle. With regard to the balance 50% of compensation, to which the claimants are entitled, the claimants are at liberty to recover the same from the owner of the vehicle.

Miscellaneous petitions, if any, pending in this appeal shall stand closed. No order as to costs.

A. SHANKAR NARAYANA, J

September 15, 2017
v v