HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.254 OF 2006

JUDGMENT:

1. This appeal is preferred by the petitioners in O.P.No.1272 of 1999 on the file of the Motor Accidents Claims Tribunal-cum-District Court, Visakhapatnam (*for short, 'the Tribunal'*), dissatisfied with the award dated 27.01.2003 granting a sum of Rs.3,00,000/- towards compensation by making the 1st respondent, only, liable to pay the said amount.

2. Appellants are the claimants, whereas respondent No.1 is the driver of the offending lorry bearing No.AP 16W 3327 that involved in the accident and respondent No.2-Oriental Insurance Company Limited, is the insurer of the said lorry.

3. The Tribunal framed three issues and during enquiry on behalf of the petitioners, wife of the deceased was examined as PW1 and one P.Srinivas who was an eye witness was examined as PW2 and Exs.A1 to A3 were marked. On behalf of 2nd respondent one of their employee Sri Ch.V.Viswanadham was examined as RW1 and Exs.Ex.B1 and B2 were marked.

4. The Tribunal, on appraisal of evidence on record, and relying on the oral evidence of PW2 and documentary evidence Exs.A1 to A3 came to a conclusion that due to rash

and negligent driving of the Lorry belonging to the 1st respondent, the accident occurred and tendered the finding on Issue No.1 in favour of the petitioners.

5. On issue No.2, the Tribunal, awarded a total amount of Rs.3,00,000/- with interest @ 9% per annum from the date of petition till the date of ralization. While deciding the liability of respondents, the Court below fixed liability on 1st respondent-owner of the offending vehicle treating the deceased as gratuitous passenger as he met with accident while traveling in a goods vehicle.

6. Though the present appeal is filed challenging the judgment and award, but the counsel for the appellants/petitioners restricted his argument to the liability of the insurance company.

7. Now, the short point that arises for consideration is, whether the insurance company is liable to indemnify the owner of the vehicle?

8. Learned counsel for appellants submits that though the Tribunal was right in fixing the liability, but the Tribunal should have directed the 2nd respondent to first pay and recover the same from the 1st respondent in view of the Judgment in ***Manuara Khatun and others v. Rajesh Kumar Singh and Others*** [1] which reads as follows;

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[1] (2017) 4 SCC 796

"13. The only question, which arises for consideration in these appeals, is whether the appellants are entitled for an order against the insurer of the offending vehicle i.e. (Respondent 3) to pay the awarded sum to the appellants and then to recover the said amount from the insured (owner of the offending vehicle Tata Sumo) Respondent 1 in the same proceedings.

14. The aforesaid question, in our opinion, remains no more res integra. As we notice, it was the subject matter of several decisions of this Court rendered by three-Judge Bench and two-Judge Bench in the past viz. *National Insurance Company Limited v. Baljit Kaur*[2], *National Insurance Company Limited v. Challa Upendra Rao*[3], *National Insurance Company Limited v. Kaushalaya Devi*[4], *National Insurance Company v Roshan Lal*[5], *and National Insurance Company Limited v. Parvathneni*[6].

15. This question also fell for consideration recently in *National Insurance Company Limited v. Saju P. Paul*[7] wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the insurance company by reversing the judgment of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the insurance company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the insurance company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "*pay and recover"*.

9. The facts of the present case are also identical to the facts of the case mentioned supra. In view of the same, the

[2] (2004) 2 SCC 1 : 2004 SCC (Cri) 370
[3] (2004) 8 SCC 517 : 2005 SCC (Cri) 357
[4] (2008) 8 SCC 246 : (2008) 3 SCC (Cri) 467
[5] (2017) 4 SCC 803
[6] (2009) 8 SCC 785 : (2009) 3 SCC (Civ) 568: (2009) 3 SCC (Cri) 943
[7] (2013) 2 SCC 41: (2013) 1 SCC (Civ) 968

2nd respondent-The Oriental India Insurance Company Limited, being the insurer of the offending vehicle which was found in causing accident due to negligence of its driver, is directed to first pay the amount determined by the Tribunal to the appellants and then recover the said sum from the owner of the offending vehicle-Respondent No.1. To that extent, the appeal is allowed modifying the order and decree passed by the Tribunal. No order as to costs.

As a sequel, miscellaneous applications, if any, pending in this appeal shall stand closed.

A.RAJASHEKER REDDY, J

08.02.2018
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