

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2279 OF 2006

JUDGMENT:

This is an appeal filed by the Insurance Company questioning the Award of the Motor Accidents Claims Tribunal-cum-VI Additional District Judge (III FTC), Warangal at Mahabubabad (for short, the Tribunal) in M.V.O.P.No.1063 of 2004, dated 29.06.2006.

2. The brief facts of the case are as follows:

On 18.09.2004, respondent No.1/claimant and one Uppula Sadaiah engaged a tractor-trailor bearing No.AP36V 8495-8496 for transportation of Maize to Narsampet Market. During the course of journey, at about 18.00 hours, when the tractor reached near the outskirts of Chennaraopet Village, the driver of the tractor had driven it in a rash and negligent manner, with high speed, thereby causing the button of the trailer to cut down, thus, it delinked from the tractor causing an accident. The claimant fell down and sustained grievous injuries. He filed the aforesaid MVOP No.1063 of 2004 against the owner of the tractor (respondent No.2 herein) and insurer of the tractor (appellant herein), claiming compensation of Rs.2,00,000/- for the injuries sustained by him.

3. The owner of the tractor remained *ex parte*. The Insurance Company filed counter denying the allegations and contending that there is no provision for seating capacity for any person other than the driver in the tractor, and as the claimant travelled in the tractor as a gratuitous passenger, the policy does not cover the risk of respondent No.1 and prayed to dismiss the claim petition.

4. Taking into consideration the pleadings and also the arguments advanced, and the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the tractor and awarded total compensation of Rs.1,61,400/-, with interest at the rate of 7.5% per annum, affixing the liability jointly and severally on the owner as well as insurer. The Award was apportioned under various Heads. Aggrieved by the fastening of liability on the insurance company, the Insurance Company filed the present appeal.

5. Sri Kota Subba Rao, learned counsel for the appellant, submits that the tractor-trailor is only meant for carrying goods, and not passengers. It is his contention that as per Regulation 28 of the Rules of the Road Regulations, 1989, a driver when driving a tractor shall not carry or allow any person to be carried on tractor. In the present case, as the claimant travelled on the tractor as a gratuitous passenger, the insurance company is not liable to pay any compensation and sought to set aside the Award of the Tribunal. In support of his arguments, he relied upon a decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Baljit Kaur**¹. By relying on **Nagula Tulasamma and Another Vs. Golangi Bhoopathi and Others**² and **Nandi Narsimlu Vs. K.Ramana Reddy and Another**³, he submits that the said cases are similar to the present one, and this Court having found that

¹ 2004 ACJ 428

² 2015 (1) ALD 613

³ 2018 (3) ALD 531

there is no liability for the insurance company in those cases, has not given direction to pay and recover, and therefore there can be no liability against the insurance company, and even pay and recover direction cannot be given in this case.

6. Sri A.Prabhakar Rao, learned counsel for the respondent No.1/claimant, submits that the Tribunal passed a well reasoned order which needs no interference. He further submits that though respondent No.1 travelled in the tractor as an unauthorized passenger, the liability of insurance company cannot be exonerated and hence the Tribunal has rightly passed the Award, and the same does not need any interference. He further contended that even, for the sake of argument, the liability of insurance company is exonerated, the insurance company is still liable to pay the claimant at the first instance and then recover from the owner of the vehicle, in accordance with the decision of Hon'ble Supreme Court in **Manuara Khatun Vs. Rajesh Kr. Singh**⁴.

7. In **Baljit Kaur**'s case (supra), the Hon'ble Supreme Court, had the occasion to deal with the liability of the insurer in respect of gratuitous passengers traveling in a goods vehicle. In the said case, the Hon' ble Supreme Court had clarified the legal position, which reads as under:

“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

⁴ (2017) 4 SCC

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*, 2000 ACJ 1 (SC). The said decision has been overruled only in *Asha Rani*, 2003 ACJ 1 (SC). 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 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. The sum and substance of the legal position with respect to the liability of insurer in case of gratuitous passenger, as held by the Supreme Court in the decision in **Baljit Kaur** (supra) is that the insurance company has to satisfy the Award in the first place, and thereafter can recover the amount from the owner of the vehicle by filing a petition before the executing Court.

9. In **Manuara Khatun**'s case (supra), the Hon'ble Supreme Court dealt with the case of gratuitous passengers and held that the claimants are entitled for an order against the insurer to pay

the awarded sum to the claimants and then to recover the said amount from the insured in the same proceedings.

10. Further, in a recent judgment in **Anu Bhanvara Vs. Iffco Tokio General Insurance Company Limited**⁵, the Hon'ble Supreme Court dealt with the similar issue by referring its earlier judgments in **Baljit Kaur's** case (supra) and **Manuara Khatun's** case (supra) apart from other judgments, invoked the principle of 'pay and recover', in the peculiar facts and circumstances of that case.

11. Having considered the rival contentions, it is not in dispute that the tractor-trailor in question is a goods carriage vehicle; and at the time of accident, the claimant was traveling on the tractor-trailor as a gratuitous passenger, and there is no insurance coverage covering the risk of the claimant. It is also not in dispute that the insurance policy (Ex-A7) was valid and subsisting as on the date of accident. Therefore, it can be said that respondent No.1 travelled as a gratuitous passenger in the crime vehicle.

12. Though this Court in **Nagula Tulasamma's** case (supra) and **Nandi Narsimlu's** case (supra), exonerated the liability of the insurance company and did not invoke the principle of 'pay and recovery', in **Baljit Kaur's** case (supra) and also in **Anu Bhanvara's** case (supra), the Hon'ble Supreme Court, while dealing with the case of gratuitous passengers, directed the insurer to pay the awarded sum to the claimants therein and recover the same from the insured in the same proceedings. In view of the above, as

⁵ Laws (SC) 2019 8 40

respondent No.1 travelled as a gratuitous passenger in the tractor trailer, it is just and reasonable to invoke the principle of 'pay and recover'. Therefore, the finding of the Tribunal directing the appellant and respondent No.2 herein to deposit the compensation amount jointly and severally is set aside.

13. In view of the foregoing discussion, the Award of the Tribunal is modified to the extent of directing the appellant/insurance company to pay the compensation amount to the claimant/respondent No.1 in the first instance, and recover the same from the owner of the tractor-trailer thereafter. Except the said modification, the Award of the Tribunal shall remain unchanged.

14. The Motor Accidents Civil Miscellaneous Appeal is partly allowed to the extent indicated above. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

Date: 29-10-2019
TJMR

T.AMARNATH GOUD, J