THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2340 OF 2006

JUDGMENT:

This appeal is filed by the appellant/2nd respondent-Insurance company aggrieved by the order and decree dated 09.02.2005 passed in M.V.O.P.No.354 of 1997 by the Chairman, Motor Accidents Claims Tribunal –cum- the Principal District Judge Medak at Sangareddy (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The brief facts of the case are that the on 01.12.1996 at about 6:30 PM when the deceased Narsimulu along with goods was traveling in DCM vehicle bearing No.AP-12/T-5216 and when the said DCM reached near Mogdampalli village on Chindholli cross road, the driver of the vehicle drove the same in a rash and negligent manner, due to which the vehicle turned turtle, the deceased fell down from the DCM and died instantaneously. The police registered a case against the driver of the DCM. At the time of accident, the deceased was aged about 30 years, attending labour work and earning Rs.3,000/- per month and the same was contributing to the claimants, who were solely depending on his earnings. Due to premature death of the deceased, the claimants lost their bread winner, and as such they filed claim petition claiming compensation of Rs.1,80,000/- from the 1 and 2, who are owner and insurer of the subject vehicle.

4. Before the Tribunal, the 1st respondent remained *ex parte.* The 2nd respondent filed written statement denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the evidence of P.W.1, Exs.A-1 to A-3 and Ex.B-1-policy copy, the Tribunal came to the conclusion that the accident had occurred due to rash and negligent driving of the driver of the DCM belonging to the 1st respondent, insured with the 2nd respondent, and awarded total compensation of Rs.1,45,200/-, i.e., Rs.1,15,200/- towards loss of earnings of the deceased, Rs.15,000/- towards loss of consortium to the petitioner-wife, Rs.15,000/- towards loss of estate, with interest @ 9% per annum, payable by the respondents 1 and 2 jointly and severally. Aggrieved by the same, the appellant/2nd respondent insurance company filed the present appeal.

6. Heard Sri E.Venugopal Reddy, learned counsel for the appellant/2nd respondent and Sri C.V.Bhaskar Reddy, learned counsel for the respondents 1 to 6/climants. Perused the material record.

7. Sri E.Venugopal Reddy, learned Standing Counsel for the appellant, would submit that the subject DCM is only meant for carrying goods, and not passengers. He contended that as per Regulation 28 of the Rules of the Road Regulations, 1989, a driver when driving a vehicle shall not carry or allow any person to be carried on vehicle. In the present case, as the deceased travelled on a subject DCM as a gratuitous passenger, the insurance company is not liable to pay any compensation and sough to set

aside the order of the Tribunal. In support of his arguments, he relied upon a decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd v. Baljit Kaur[1].** By relying on **Nagula Tulasamma and another v. Golangi Bhoopathi and others[2]** and **Nandi Narsimlu v. K.Ramana Reddy and anther[3]**, learned Standing Counsel for the appellant would submit that the said cases are similar to the present one, and this Court having found that 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. He further submitted that the Tribunal granted interest at 9% per annum and the same may be reduced.

8. Sri C.V.Bhaskar REddy, learned counsel for respondent Nos.1 to 6 herein would submit that the Tribunal passed a well reasoned order, which needs no interference by this Court. He further submits that though the deceased travelled in the DCM as an unauthorized passenger, the liability of insurance company cannot be exonerated and hence, the Tribunal has rightly passed the order and there are no grounds to interference with the same. He further submitted that even for the sake of argument, the liability of insurance company is exonerated, the insurance company is still liable to pay respondent Nos.1 to 6, who are legal representatives of the deceased, at the first instance and then recover from the owner of the vehicle, in accordance with the

[1] 2004 ACJ 428
[2] 2015 (1) ALD 613
[3] 2018 (3) ALD 531

decision of the Hon'ble Apex Court in **Manuara Khatun v. Rajesh Kr.Singh**[4]

9. In **Baljit Kaur's** case (supra), the Hon'ble Apex Court had an occasion to deal with the liability of the insurer in respect of gratuitous passengers travelling in a goods vehicle. In the said case, the Hon'ble Apex 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 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 proceedings before the executing court as if the dispute between this 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

[4] AIR 2017 SC 1204

involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

10. The sum and substance of the legal position with respect to the liability of insurer in case of gratuitous passenger, as held by the Hon'ble Apex Court in the decision in **Baljit Kaur's** case (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.

11. In **Manuara Khatun's** case (supra), the Hon'ble Apex Court dealt with the case of gratuitous passengers and held that the claimants are entitled for an order against the insurer to pay and awarded sum to the claimants and then to recover the said amount from the insured in the same proceedings.

12. Further, in a recent Judgment in **Anu Bhanvara v. Iffco Tokio General Insurance Company Limited**[5] the Hon'ble Apex 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.

13. Having considered the rival contentions, it is not in dispute that the subject DCM vehicle in question is a goods carriage vehicle; and at the time of accident, the deceased was travelling in the DCM as a gratuitous passenger, and there is no insurance coverage covering the risk of the deceased. It is also not in dispute that the insurance policy-Ex.B.1 was valid and subsisting as on

[5] Laws (SC) 2019 840

the date of the accident. Therefore, it can be said that the deceased travelled as a gratuitous passenger in the subject van.

14. 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 Apex 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, the deceased travelled as a gratuitous passenger in the subject van, it is just and reasonable to invoke the principle of 'pay and recover'. Therefore, the finding of the Tribunal directing the appellant herein/insurance company and respondent No.7 herein to deposit the compensation amount jointly and severally is set aside.

15. In view of the foregoing discussion, the order of the Tribunal is modified to the extent of directing the appellant/insurance company to pay the compensation amount to respondent Nos.1 to 6 herein/claim petitioners in the first instance, and recover the same from the owner of the van thereafter.

16. As the rate of interest awarded by the Tribunal is excessive, and as the Apex Court in several decisions from time and again stating that the rate of interest should not exceed 7.5% per annum, this Court is of the view that the rate of interest is reduced to 7.5% per annum from 9% per annum. Except the above said modification, the Award of the Tribunal shall remain unchanged.

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

T.AMARNATH GOUD, J

28th November, 2019

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THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2340 OF 2006

Date:28.11.2019

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