

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A No.3708 of 2011

JUDGMENT:

This appeal is filed by the appellant-Insurance Company aggrieved by the Order, dated 14.08.2007, passed in O.P.No.1488 of 2003 by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Khammam (for short, the Tribunal).

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

On 13.05.2003 while the deceased Pandilla Durga Prasad (hereinafter referred to 'as the deceased') was travelling by Van bearing No.AP-20-T-7461 and when the said van reached outskirts of Kokkireni Village, the driver of the van drove the vehicle in a rash and negligent manner with a high speed and hit against a Mango tree. Due to which, the deceased received serious bleeding head injuries and fractures to his leg. Thereafter, the deceased referred to Osmania General Hospital, Hyderabad, and from there, he was referred to NIMS Hospital, Hyderabad, and while undergoing treatment he died on 27.05.2003. Prior to the accident, the deceased was hale and healthy and was doing cloth business and earning Rs.6,000/- per month. Respondent No.1/claim petitioner No.1 is the mother, respondent Nos.2 to 4/claim petitioner Nos.2 to 4 are brothers of the deceased. A case in Crime No.37 of 2003 under Section 304-A I.P.C was registered against the driver of the crime vehicle. A sum of Rs.50,000/- was spent towards medical, travelling and other expenses. In all, respondent Nos.1 to 4 are claiming compensation of Rs.2,00,000/- for the death of the deceased in a motor accident.

3. Respondents 5 and 7 herein remained *ex parate*.

4. Respondent No.6, owner of the subject van filed counter denying the allegations and contended that he does not know about the accident or the death of the deceased; that respondent No.6 alienated the subject vehicle in favour of respondent No.7 herein, as such respondent No.7 alone is responsible to pay the compensation amount. It is further stated that the subject vehicle was insured with the United Insurance Company, the appellant herein and the same was in force and ultimately, prayed to dismiss claim petition against respondent No.6.

5. The appellant/respondent No.3 filed counter denying the allegations as to narration of accident, age, death, dependency, rash and negligent driving of driver of the vehicle etc. It is further stated that the deceased boarded the subject vehicle as an unauthorized passenger; that the subject van is not meant for travel of the passengers; that the passengers in the goods vehicle are not entitled to any compensation from the insurance company and ultimately prayed to dismiss the claim petition

6. 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 rash and negligent driving of the driver of the van and awarded compensation of Rs.1,72,000/- with interest at the rate of 7.5% per annum, fixing the liability jointly and severally against respondent Nos.5 to 7 herein as well as the insurer. The Award was apportioned under various Heads. Aggrieved by

fastening of liability on the insurance company, the Insurance Company filed the present appeal.

7. Sri E.Venugopal Reddy, learned Standing Counsel for the appellant, would submit that the subject van 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 van as a gratuitous passenger, the insurance company is not liable to pay any compensation and sought 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 another**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.

8. Sri R.Nageswar Rao, learned counsel for the 1st respondent 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 a van as an

¹ 2004 ACJ 428

² 2015 (1) ALD 613

³ 2018 (3) ALD 531

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 4, who are legal representatives of the deceased, at the first instance and then recover from the owner of the vehicle, in accordance with the 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

⁴ AIR 2017 SC 1204

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 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

⁵ Laws (SC) 2019 840

‘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 van in question is a goods carriage vehicle; and at the time of accident, the deceased was travelling in the van 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.4 was valid and subsisting as on 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 respondent Nos.5 to 7 herein and insure 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 4 herein/claim petitioners in the first instance, and recover the

same from the owner of the van thereafter. Except the said modification, the order of the Tribunal shall remain unaltered.

16. The Appeal is partly allowed to the extent indicated above. 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



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Date:28.11.2019

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