# HONOURABLE SRI JUSTICE N. TUKARAMJI

## M.A.C.M.A.No.4460 OF 2008

**JUDGMENT:**

The claimants, being aggrieved by the quantum of compensation awarded in the decree and Judgment dated 19.01.1999 in O.P.No.526 of 1994, by the Chairman, Motor Accidents Claims Tribunal-cum- District Judge, Medak at Sangareddy, preferred this appeal.

2. The petitioners i.e., the husband and sons of Kaitha Pochamma/deceased, who died in a motor accident dated 16.08.1999, filed the claim petition seeking compensation of Rs.70,000/-.

3. The case of the petitioners in brief is that on 16.08.1999, Kaitha Pochamma/deceased had boarded the lorry bearing registration No.AAB 4656 (hereinafter 'the lorry') along with vegetable baskets by paying fare to go to Hyderabad. When the

lorry reached Vargal cross roads, the driver had driven the lorry in rash and negligent manner, lost control over the vehicle and thereby the lorry turned turtle, which caused instantaneous death of Pochamma/deceased. Thus, the petitioners pleading loss of dependency, filed the claim petition for compensation.

4. The learned Tribunal on considering the material and by observing that Kaitha Pochamma/deceased was traveling in the crime lorry as a labourer by exonerating the insurer/2nd respondent, awarded Rs.64,800/- as compensation against the owner/1st respondent.

5. Aggrieved thereby, the claimants/petitioners (hereinafter 'the petitioners') filed the present appeal, contending that the learned Tribunal erred in exonerating the insurance company/2nd respondent (hereinafter 'the respondent'). Further disputed the observations that basing on the entries in F.I.R., and charge sheet, Pochamma/deceased was not traveling in the lorry as owner of the goods as it is against the evidence of the eye

witness/P.W.2. Thus, prayed for reassessment and to grant the compensation against both the respondents.

6. On the other hand, the learned counsel for the respondent pleaded that the Tribunal carefully analyzed the factual situation and by discarding the improbabilities and in juxtaposition of police record, rightly held that Pochamma/deceased might be one among the labourers or the unauthorized passenger, whose risk is not covered in the insurance policy. Thus, exonerating the respondent for the liability is perfectly justified; therefore, the award deserves confirmation.

7. Heard Sri Kota Subba Rao learned counsel for the petitioners and Sri Ramachandra Reddy Gadi learned counsel for the respondent.

8. The son of Pochamma/deceased/3rd petitioner as P.W.1 deposed that he got boarded his mother/deceased in the crime lorry with three baskets of tomatoes and one bag of lady fingers by paying Rs.6/- per basket to the driver.

9. The co-passenger as eye witness/P.W.2 deposed that on the date of accident, he boarded the crime lorry with seed paddy bag. At about 7.00 pm., on the way at Gouraram, ten to fifteen persons including a child boarded the lorry with vegetable baskets by paying fare to the driver. After traveling for a furlong, at Vargal Chowrasta, the vehicle turned turtle and the lorry was loaded with sand. The persons including the deceased who were sitting on the sand died in the accident. He received minor injuries as he was sitting in the cabin of the lorry.

10. Therefore, as per the P.W.2 Pochamma/deceased boarded the sand loaded lorry in the carriage on sand load as fare paid passenger with vegetables (goods). In this context, the question emerges that whether the risk of paid passenger with goods or otherwise is covered under the insurance policy/Ex.B1.

11. At the outset, in the police record especially in the scene observation report, there is no reference of vegetables or any baskets or bags. Thus, the testimony of P.Ws.1 and 2 regarding the goods is not corroborating with the police record. This

situation is making the version given by the P.Ws.1 and 2 to that extent is not reliable. Thus, the position of Pochamma/deceased shall be taken as paid passenger in the goods vehicle.

12. As the lorry is goods vehicle, the passengers whether paid or gracious are not allowed to travel. The insurance policy/Ex.B1 is only statutory policy covering 3rd party risk. It is now well settled that the policy issued under Section 147 of the Act do not cover the risk of any passenger other than the owner of the goods and the passengers if any will fall in the category of unauthorized passengers. This proposition is fortified by the Hon'ble Apex Court in the authorities in *National Insurance Co.Ltd., Vs. Baljit Kaur and others*[1], *New India Assurance Company Vs. Satpal Singh*[2], and *New India Assurance Co.Ltd. Vs. Asha Rani*[3] by holding that no passenger, subject to exception of the proviso to Section 147 of the Motor Vehicles Act should be allowed to board the goods carriage for any journey and thus, there would be no occasion to cover the risk of any

[1] (2004(2) SCC 1
[2] (200) 1 SCC 237
[3] (2003) 2 SCC 223

passenger in the insurance policy, resultantly, the insurer cannot be held liable to indemnify the insured.

13. Further in *National Insurance Company Limited Vs. Cholleti Bharatamma*[4] in para 11 it was held that "it is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle".

14. In the present case, Pochamma/deceased was travelling in the carriage on the sand load of the lorry. Therefore, even if the plea of the petitioners that she was traveling with vegetables/goods is accepted, as she was travelling in the carriage, she cannot be held as owner of the goods. Even then no liability can be fastened on the insurer to indemnify the liability of the insured/owner of the crime vehicle. Resultantly, the conclusion of the tribunal that the owner/insured alone is liable to pay compensation stands sustained.

15. With regard to the compensation, the P.W.1 deposed that Pochamma/deceased was aged 45 years and used to earn

[4] (2008) 1 SCC 423

Rs.1,500/- per month by working as labourer and selling vegetables. Though there is no independent material, having regard to the entries in the post mortem examination report, the age and considering the wages of a manual labour at the relevant time, the claim of income at Rs.1,500/- per month can be accepted as it is reasonable. In addition, 25% is to be added for future prospects and out of it, as the dependents are 3 in number, 1/3rd of the total income is liable to be deducted towards personal expenses. Accordingly, the total annual sum would be Rs.15,000/- (18,000+4,500-1/3) and if this amount is multiplied with the relevant multiplier to the age of Pochamma/deceased, the total income comes to Rs.2,10,000/- (Rs.15,000 x 14). The petitioners are entitled to this amount towards ‘loss of dependency’.

16. In addition, the petitioners are also entitled for compensation under the conventional heads, viz., Rs.15,000/- towards Loss of estate and Rs.15,000/- towards funeral charges and the 1st petitioner is entitled for spousal consortium at

Rs.40,000/-. Further, 2nd and 3rd petitioners are entitled for Rs.40,000/- each towards parental consortium.

17. Thus, in total, the appellants are eligible for the compensation as follows :

| DESCRIPTION | AMOUNT (Rs.) |
|---|---|
| Loss of Dependency | 2,10,000.00 |
| Loss of Estate | 15,000.00 |
| Funeral Charges | 15,000.00 |
| Spousal consortium | 40,000.00 |
| Parental Consortium to 2nd and 3rd petitioners @ Rs.40,000/-each | 80,000.00 |
| **TOTAL** | **3,60,00.00** |

18. For the aforesaid reasons, the Appeal is partly allowed as follows:

(i) the 1st respondent alone is liable to pay Rs.3,60,000/- (Rupees three lakhs, sixty thousand only) with interest @ 7.5% per annum with costs., from the date of petition till date of realization;

ii) the 1st respondent is directed to deposit the awarded amount within one month from the date of receipt of a copy of this judgment;

(iii) the apportionment among the petitioners shall be in terms of the tribunal award.

(iv) on deposit of the awarded amount, the petitioners are permitted to withdraw entire amount apportioned in their favour.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

**N.TUKARAMJI, J**

**Date:27.06.2022**
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