THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A.No.1766 of 2005

JUDGMENT:

This appeal is filed by the insurance company - second respondent in M.V.O.P.No.367 of 2001, against the award dated 12.08.2004 passed by the Motor Accident Claims Tribunal – cum – III Additional District Judge, Tirupati.

The first respondent herein filed the claim petition claiming a compensation of Rs.1,50,000/- for the injuries sustained by him in a motor accident that occurred on 16.10.1999 when he was going as a passenger in a lorry bearing No.AAD 2727. He was aged about 40 years at the time of accident and he was an agriculturist. In the said accident the claimant sustained deformity of upper $1/3^{rd}$ of left upper arm, deformity of the left thigh and other injuries on the left lower leg, left ankle joint etc. The Tribunal framed the following issues:

> "1. Whether the pleaded accident occurred and if so was it due to the fault of the driver of the lorry bearing No.AAD 2727?
>
> 2. Whether the lorry in question belongs to R-1 and stood insured with R-2/insurance company by the date of accident and if so whether policy covers the risk of the petitioner?
>
> 3. Whether the petitioner suffered injuries and entitled to compensation and if so to what amount and from which of the respondents?
>
> 4. To what relief?

In respect of issue Nos.1 and 2 the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.AAD 2727. With regard to the liability of the insurance company, the Tribunal, basing on the decision of the Supreme Court in **National Insurance Company Limited v. Swaran Singh**, held that it was liable to pay the compensation. Challenging the said liability, the present appeal is filed.

Learned Counsel for the appellant submitted that even as per the averments in the claim petition, the claimant was travelling as a passenger in the lorry, which he was not authorized to do. R.W.1 was examined, who stated that an act policy was issued and the lorry was meant for carrying goods, but not for carrying passengers. He further stated that no premium was paid by the lorry owner covering the risk of passengers, whereas the claimant was travelling as a passenger at the time of accident.

As per the evidence on record, the lorry bearing No.AAD 2727 was involved in the accident and the claimant was travelling as a passenger in the said vehicle. The claimant is not authorized to travel in the said lorry. Reliance of the Tribunal on **Swaran Singh**'s case (supra) is erroneous.

With regard to the liability of the Insurance Company, the Supreme Court in **National Insurance Company Limited v. Balakrishnan**, held as follows:

> "In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in **Bhagyalakshmi v. United Insurance Co. Ltd.,** ((2009) 7 SCC 148) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High

Court and we have also reproduced the same.”

In view of the authoritative pronouncement of the Supreme Court the claim is not covered and no amount need be paid by the Insurance Company. Even otherwise also, the case is covered by **New India Assurance Company Limited v. Asha Rani**.

The appeal is, accordingly, allowed setting aside the award so far as making the appellant liable to pay the compensation. However, the award as against the owner of the vehicle is upheld. In view of allowing the appeal, the appellant is permitted to withdraw the amount deposited before the Tribunal. The miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

24.11.2015

vs

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