

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

+ M.A.C.M.A. Nos.569,571, 576 and 3398 of 2009 and 729 of 2010

MACMA No. 569 of 2009

Between:

The United India Insurance Company Limited. Appellant

And

1. Smt P. Sunitha and others. ... Respondents

DATE OF JUDGMENT PRONOUNCED: **06.10.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers

may be allowed to see the judgments? Yes / No

2. Whether the copies of judgment may be

marked to Law Reporters / Journals? Yes / No

3. Whether Their Lordship wish to

see the fair copy of the Judgment? Yes / No

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ M.A.C.M.A. Nos.569,571, 576 and 3398 of 2009 and 729 of 2010

%06.10.2015

MACMA No.569 of 2009

Between:

The United Indian Insurance Company Limited Appellant

AND

1. Smt P. Sunitha and five others Respondents

! Counsel for Petitioner : Sri N. Mohan Krishna.

^ Counsel for Respondents : Sri K. Lakshman.

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> Head Note:

? Cases referred:

1. 2014 Law Suit (AP) 26.
2. 2008 (1) ALD 190

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

M.A.C.M.A. Nos.569,571, 576 and 3398 of 2009 and 729 of 2010

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COMMON JUDGMENT:

Aggrieved by the Awards dated 04.03.2008 in OP Nos.61, 83, 63, 59 and 60 of 2005 passed by the Chairman, MACT–cum-VI Addl. District Judge, Ranga Reddy District at Vikarabad (for short ‘the Tribunal’) awarding compensation of Rs.3,00,000/- each with costs and interest at 7.5% to the legal representatives of the five deceased, who died in a lorry accident on 17.11.2004, the second respondent, who is the insurer of the crime vehicle, filed the instant MACMAs.

2) Heard Sri N. Mohan Krishna, learned counsel for appellants and Sri K. Lakshman, learned counsel for respondents/claimants. Though Notice was served on the driver-cum-owner, there is no appearance on his behalf and hence treated as heard.

3) Learned counsel for appellant made it that he was only against imposing liability on the insurance company by the Tribunal but not against the quantum of compensation fixed by it. Learned counsel repudiated the liability of insurance company mainly on two arguments; firstly, that the crime vehicle is a lorry, which is a goods carrying vehicle, but whereas the deceased in all the appeals traveled as gratuitous/unauthorized passengers and met with death when on the way the lorry turned turtle at a curve at A.P. Police Academy within the jurisdiction of Narsingi police station and that the liability of a gratuitous passenger in a goods vehicle will not be covered under the policy and thereby insurance company will not attain any liability which was reiterated by the Apex Court on a number of occasions and therefore, basing on this legal principle, the Tribunal ought to have exonerated the insurance company by fixing liability on the owner-cum-driver of the lorry alone. Secondly, the driver-cum-owner had no valid driving license to drive the lorry and for the breach of the terms of the policy, the insurance company must have been exonerated. Though he also feebly argued that the owner had no permit to transport the goods in his vehicle, he has not much banked on it. He, thus, prayed to allow the appeal and exonerate the insurance company from its liability. In this context, he relied upon a decision reported in ***Bajaj Allianz General Insurance Company Limited v. Gandam Somulamma and others.***

4) Per contra, the learned counsel for respondents/ claimants while supporting the awards argued that the deceased were not gratuitous or unauthorized passengers, but the overwhelming evidence placed by the claimants would show that they were the owners of the respective vegetable bags carrying from their villages Pattur and Kamareddyguda to Boinipally Market and unfortunately they met with an accident and died on the way near A.P. Police Academy and as such, the terms of the policy, even if it is an Act only policy, shall invariably cover the risk of owners of the goods and therefore, the Tribunal rightly held so. Regarding the driving license issue, learned counsel argued that except contending that the lorry driver-cum-owner had no valid driving license and examining its surveyor who did not make any efforts to obtain information from R.T.A Authority, the insurance company has not placed any reliable evidence to conclude that the driver had no valid driving license and thus, the Tribunal rightly rejected its contention. He, thus, prayed to dismiss the appeal.

5) In the light of the above rival arguments, the point for determination in this appeal is:

“Whether the Tribunal was right in fastening liability on the insurance company ?”

6) **POINT:** Accident, involvement of Lorry bearing No. 16 T 6248 and the death of the deceased are not in dispute. The bone of contention is the liability of the insurance company. In this context, the first argument raised by the insurance company is concerned, the copious evidence placed by the claimants which is reliable, does not allow this Court to conclude that the deceased and others were gratuitous or unauthorized passengers in a goods vehicle. The accident was occurred in the early hours of about 3.00 am on 17.11.2004 and EX.A.1—FIR was lodged within short time at 6.15 am, wherein one of the injured namely--Chakali Pullaiah clearly stated that himself and some of his co-villagers of Kamareddyguda and villagers of Pathur village including the deceased loaded their carrot bags in the offending lorry on the mid night at about 12.30 am

and started in Pathur village to Boinipally Market for selling their vegetables and on the way, the lorry turned turtle near a curve at Police Academy and five persons including the deceased died in the accident. Thus, his emphatic version is that himself, deceased and others traveled in the lorry as owners of their respective goods but not as unauthorized or gratuitous passengers. As already stated, the accident was occurred at 3.00 am, whereas, the report was lodged at 6.15 am and in this short span of time, it would be difficult to conceive, the injured who is an illiterate could create a false version regarding the capacity in which they traveled in the vehicle so as to get coverage of policy. So, in my view, Ex.A.1 being first in point of time, gives unvarnished truth of the purpose and capacity in which deceased and others travelled in the crime lorry. Apart from Ex.A.1, we have oral evidence of D. Mallareddy(PW.2/ PW.3), who also traveled in the ill-fated lorry and sustained injuries, confirms the facts mentioned in Ex.A.1-FIR. He denied the suggestion in the cross examination of R.2 that the deceased and others traveled in the lorry only as a passengers. Except the suggestion, nothing tangible could be extracted in the cross examination to disbelieve his version. Above all, it is interesting to note that RW.2, who is said to be an Investigator appointed by the appellant/insurance company and conducted investigation in respect of the accident, categorically admitted in his cross examination that his investigation revealed that the crime vehicle was going from Pathur village to Hyderabad by taking vegetables and his investigation further revealed that the persons who were traveling in the crime vehicle were the owners of the goods (vegetables). More than the above evidence, perhaps it would be too much to ask the claimants to establish that the deceased in the batch of appeals were the owners of the respective goods but not unauthorized/ gratuitous passengers. When it is accepted that the deceased were the owners of the goods, Ex.B.1-- Policy filed in MACMA No. 3398 of 2009 even if an Act Policy issued under Section 147 of Motor Vehicle Act, 1988, should invariably cover the risk of the owners of the goods or their authorized representatives. The appellant has not made any efforts to convince

the Court as to how Ex.B.1—Policy does not cover the risk of the deceased. Therefore, it must be held that the policy covers the risk of deceased in all the appeals.

7) To an incidental question put by this Court whether the policy would cover more than one owner of the goods or his authorized representative, learned counsel for respondents/claimants answered in a positive note by taking shelter under a decision of this Court reported in ***United India Insurance Company Limited, Kurnool v. Chakali Jakkalu and another***. In that case, the claimants were two owners of their respective goods traveled in a lorry which met with an accident. Against the Tribunal awarding compensation to both of them, the Insurance Company raised a contention before High Court that the expression 'owner of the goods or his authorized representative' employed in Section 147 of M.V.Act take within it, only a single owner but not multiple owners or their authorized representatives. A learned Judge of this Court negated this contention by referring to Section 13 of General Clause Act, 1897 and observing that the said provision contemplates that in any central legislations unless there is anything repugnant, the words in the singular shall include the plural and *vice versa*. The learned Judge held thus:

“ Having regard to the same, it is not open for the appellant to contend that such expression can only be taken as singular but not more than one, especially in regard to the goods vehicle. There can be different owners and different set of goods and if any such damage is caused, certainly, all such owners can lay a claim against the insurance company”

In the light of the above discussion, I find no merits in the first argument.

8) The second argument raised by the learned counsel for appellant/insurance company is that the driver-cum-owner of the lorry did not have valid driving license and for his breaching the policy, the

insurance company deserve exoneration. I find some force in the argument. Though the cited decision in ***Gandam Somulamma and others's*** case (1 supra) is not much helpful to the appellant to conclude that the driver-cum-owner had no driving license, still the facts in this case on hand will help arrive such conclusion. In the cited decision, learned Judge of this High Court for two main reasons held that concerned driver had no driving license. Firstly, though RW.2—the owner, deposed that from the Xerox copy of license supplied by R.1—Driver, he found that the driver got license but he did not file such a Xerox copy and R.1-the driver, did not support the said version and hence it was an after thought and secondly, the insurer issued Notice to the owner under EXs. B.4 to B.8 to produce copy of driving license, but the owner and driver failed to produce the same and thereby an adverse inference can be drawn against the owner. Apart from the fact whether an adverse inference can be drawn in such circumstances or not in view of the dichotomy of decisions, that aspect need not be gone into because in the instant case no such notice was given by the insurance company to driver-cum-owner.

9) Be that it may, in the instant case, we find in Ex.A.4- Report, the MVI Inspector having found that the driver had no valid driving license recommended the Investigating Officer to book a case against the driver under the relevant provisions of M.V.Act. In the instant case, the driver-cum-owner contested the matter by filing his counter and he partook in the trial also. However, curiously, he did not enter into witness box and produce the driving license to effectively thwart the contention of the insurance company. In these circumstances, an adverse inference has to be drawn against the driver-cum-owner as he himself knows whether or not he possessed the valid driving license. Therefore, it can be held consciously he committed breach of policy. However, having regard to the fact that five poor agriculturists died in the resultant accident and total exemption of insurance company will cause any amount of hardship

to their legal representatives in realizing the compensation amount from the owner, I deem it fit to order the insurance company to pay compensation at first and then recover the same from the owner/insured later.

10) In the result, the MACMAs filed by the insurance company are partly allowed and while upholding the compensation awarded by the Tribunal in the five OPs, the appellants/insurance company is directed to pay compensation to the claimants and then recover the same from the owner/insured by executing this decree.

As a sequel, miscellaneous applications pending in all these appeals, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 06.10.2015

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HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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