THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.4033 of 2009

JUDGMENT:

Aggrieved by the Award dated 30.04.2009 in M.V.O.P.No.670 of 2007 passed by the Chairman, MACT-cum-Principal District Judge, Kadapa (for short 'the Tribunal'), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) On 02.10.2006, when the claimant was travelling in a car bearing No.AP 26 K 0478 belonging to 1st respondent being driven by its driver at high speed and in a rash and negligent manner and he lost control over the vehicle and due to which the car turned turtle near Kadirinaidu Palli on Badvel—Nellore road and the claimant sustained injury at the neck point of spinal card resulting in paralysation of the whole body below the point of injury. Immediately, she was shifted to Bollineni Hospital, Nellore and from there she was shifted to Chennai for better treatment and she undertook treatment as inpatient for different spells in different hospitals and she has become a living vegetable and she is totally dependant on others. On these pleas, the claimant filed M.V.O.P.No.670 of 2007 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondent Nos.1 and 2, who are the owner and insurer of the offending car and claimed Rs.15,00,000/- as compensation.

b) R1/owner of the car filed counter admitting the claim of the petitioner and accepting her stand.

c) R2/Insurance Company filed counter contending that vehicle in question is a private car and the risk of the passengers and the owner of the car was not covered since separate premium was not paid. R2 further contended that claim is highly excessive and exorbitant.

d) During trial, PWs.1 to 5 were examined and Exs.A1 to A36 and Exs.X1—charge sheet and X2—final bill were marked on behalf of claimant. Policy copy filed by respondents was marked as Ex.B.1.

e) The Tribunal considering both oral and documentary evidence held that accident was occurred due to the fault of driver of the car and held claimant entitled to following amounts under different heads.

Pain and suffering	Rs. 54,000-00
Medical expenses	Rs. 7,86,000-00
Extra-nourishment	Rs. 5,000-00
Permanent disability	Rs. 7,14,000-00
Total	Rs. 15,59,000-00

However, the Tribunal awarded Rs.15,00,000/- confining to the claim of the claimant.

Sofaras liability is concerned, the Tribunal found that accident was occurred due to fault of driver of the car and accordingly fastened liability on R1 and exonerated R2/Insurance on the ground that policy does not cover the risk of claimant.

Hence, the appeal by claimant.

3) The parties in the appeal are referred as they stood before the Tribunal.

4) Heard arguments of Sri D.Kodanda Rami Reddy, learned counsel for appellant/claimant and Sri V.Sambasiva Rao, learned counsel for R2/Insurance Company. Notice sent to R1/owner not yet returned.

5) Challenging the award learned counsel for appellant/claimant argued that Tribunal erred in exonerating the Insurance Company from liability on the ground that Ex.B1—policy does not cover the risk of claimant being a passenger in a private car as no premium was paid to cover her risk. Learned counsel vehemently argued that the policy in issue is package policy and the terms whereof would clearly show that it covers the risk of death or injury caused to any person including the inmates of the car and as such, the Insurance Company cannot repudiate its liability. He thus prayed to allow the appeal and fasten liability on the Insurance Company also. He relied upon the judgment of the Apex Court reported in ***National Insurance Company Limited v. Balakrishnan***[1].

6) Per contra, learned counsel for R2/Insurance Company

while supporting the award argued that the vehicle in question is a private car and policy issued is a package policy and it will not cover the risk of inmates of the car and the Tribunal after elaborate discussion, has rightly exempted the Insurance Company from the liability and therefore, the appellant cannot contend that her risk is covered. He thus prayed to dismiss the appeal.

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

“Whether the Tribunal was right in exonerating the Insurance Company from its liability?

8) **<u>POINT</u>**: Accident, involvement of car bearing No.AP 26K 0478 and claimant being the inmate of the car suffering grievous injuries and bedridden for rest of her life are all admitted facts. The bone of contention is whether the policy covers the risk of claimant or not. The further admitted facts are that the car bearing No.AP 26K 0478 belongs to first respondent who is the husband of claimant and while they were travelling along with their children the unfortunate accident took place. The car is admittedly a private car and it is not a public service vehicle. The main contention of Insurance Company divulged through the horse’s mouth of RW1—T.Babu Rao, Branch Manager of National Insurance Company Limited is that the policy issued in this case is a package policy (private vehicle) bearing No.9657710 for the crime vehicle i.e. Maruthi

car bearing No.AP 26K 0478 for the period covering from 04.02.2006 to 02.10.2006 and the said policy which was originally standing in the name of K.Srinivasulu was transferred in the name of 1st respondent on 25.02.2006. The further version of RW1 is that the claimant who is the wife of 1st respondent, travelled in the car as an occupant and she was a gratuitous passenger and she was not covered under the terms of the policy.

a) So, the contention of Insurance Company is that vehicle in question was a private car and policy issued was package policy (private car) and it does not cover the risk of inmates of the car as no extra premium was paid for that purpose.

b) In this context, a perusal of judgment in ***Balakrishnan***'s case (1 supra) relied upon by the appellant shows that in a similar case, with regard to the coverage of risk of a passenger in a Lancer car, Honourable Apex Court taking into consideration the Circulars dated 16.11.2009 and 03.12.2009 issued by Insurance Regulatory Development Authority (RDA) and Tariff Advisory Committee (TAC) held as follows:

> *'21. 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 the 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 the case of ***Bhagyalakshmi*** *(supra) 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 the 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 the light of above decision, it is clear, if the policy issued by the Insurance Company in respect of a private car is a comprehensive/package policy, it obviously covers the inmates of the car. In the light of said decision, this Court perused Ex.B1—policy. It is styled as package policy (private vehicle). In page No.2 under the head *Section II – Liability to third parties*, it is mentioned as follows:

1. x x x x

   (i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except sofaras it is liable where such death or injury arises out of and in the course of the employment of such person by the insured.

Therefore, it is clear that the policy in question covers the risk of the inmates of the car. The claimant being the passenger in the car, her risk shall be deemed to be covered under the terms of Ex.B1—policy. Hence, the contention of Insurance Company that policy does not cover her risk cannot be accepted.

9) In the result, this MACMA preferred by the claimant is allowed and ordered as follows:

a) Respondents 1 and 2 in the OP are jointly and severally liable to pay the compensation to the claimant as awarded by the Tribunal.

b) Respondents shall deposit the compensation amount within two (2) months from the date of this judgment, failing which execution can be taken out against them.

c) No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 27.08.2015

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[1] 2013 ACJ 199 (SC)