THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.429 of 2009

JUDGMENT:

Aggrieved by the Award dated 25.02.2005 in O.P.No.556 of 2001 passed by the Chairman, MACT-cum-II Additional District Judge, Kadapa at Proddatur (for short "the Tribunal"), the 3rd respondent in OP/New India Assurance Company Limited Insurance Company preferred the instant MACMA.

2) The 3rd respondent in the O.P. is the appellant herein. The claimants in the OP are the respondents 1 to 5 in the appeal. The respondent Nos.1 and 2 in the OP are the respondent Nos.6 and 7 in the appeal.

a) On factual side, on 13.01.2000 the deceased—Amireddy Bodigalla Chinna Nagireddy along with others was travelling in a lorry bearing No.AP 04 T 7207 loaded with onions from Mydukur to Chinna Singannapalli village and on the way when the lorry crossed Dhabha hotel near Gudipadu, the driver drove the vehicle in a rash and negligent manner and lost control and the lorry capsized. In the resultant accident, several persons sustained severe injuries and three persons including the deceased succumbed to injuries. It is averred that the lorry driver was at fault. On these pleas, the claimants, who are the parents, wife and children of deceased, filed O.P.No.556 of 2001 under Section 166 of Motor Vehicles Act, 1988 (for short “M.V.Act”) against respondent Nos.1 and 2, who are the owners and respondent No.3 who is the insurer of the crime vehicle and claimed Rs.4,00,000/- as compensation.

b) Respondents 1 and 2/owners remained ex-parte.

c) R3/Insurance Company filed counter and opposed the claim denying all the material averments made in the petition. It is contended that respondents 1 and 2 have violated the terms of the policy. It is also contended that the claim is highly excessive and exorbitant.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A4 were marked on behalf of claimants. RW1 was examined and Exs.B1 and B2 were marked on behalf of respondents.

e) The Tribunal on appreciation of oral and documentary evidence awarded a sum of Rs.2,21,000/- with proportionate costs and interest at 9% p.a. under different heads as below and directed the 3rd respondent/Insurance Company to deposit the compensation amount and recover from the owners:

Loss of estate	Rs.2,04,000-00
Pain and suffering	Rs. 2,000-00
Funeral expenses	Rs. 15,000-00
Total	Rs.2,21,000-00

Hence the appeal by Insurance Company.

3) The parties in the appeal are referred to as they stood

before the Tribunal.

4) Heard arguments of Sri Kota Subba Rao, learned counsel for Appellant/Insurance Company and Sri P.S.Reddy, learned counsel for respondents 2 to 5/claimants. R1 died. R6 is not necessary vide cause title. Though notice sent to R7 was served, there is no representation on his behalf. Hence, treated as heard.

5 a) Impugning the award ordering pay and recover, learned counsel for appellant/Insurance Company contended that the deceased travelled only as a gratuitous or at best a fare paid passenger in the lorry which was a goods vehicle and he and other 16 passengers had nothing to do with the partially loaded onions and hence, their risk was not covered under the terms of policy. The trial Court instead of exonerating the Insurance Company erroneously fastened liability on it and directed to pay and recover compensation. He contended that though the pleadings of the claimants in the OP to the effect that deceased travelled in the lorry as owner of the goods is accepted to be true, the pleadings would spell out that several persons including the deceased engaged the lorry to carry their respective onion bags and the lorry was already partially loaded with onion bags and as such there were multiple owners of goods and deceased was one among them. However, Ex.B1—policy copy covers the risk of only one owner of goods or his authorised representative since the seating capacity of the lorry is only three i.e. driver, cleaner and one

owner of the goods or his representative. Therefore, even if basing on the pleadings it is admitted that deceased was one of the owners of the goods, Insurance Company cannot be fastened with liability since there are several owners of goods.

b) On the other hand, learned counsel argued, if the evidence of PW2—Bommu Obul Reddy who is said to be an eye-witness who travelled in the lorry and lodged Ex.A1—FIR is taken into consideration, his evidence reveal that he and some ryots including deceased of China Singanapalli village sold onions to Pali Subba Reddy of Mydukur and on 13.01.2000 when PW2 went to Mydukur and asked Pali Subba Reddy to send lorry to their village to load the onions which were sold to him, he asked PW1 to take the lorry bearing No.AP 04 T 7207 which was half loaded with onions and thereby PW2, deceased and some others boarded the lorry to go to their village to load onions and on the midway the lorry capsized and three persons including deceased died and 14 persons including PW2 suffered injuries. So, as per his evidence none of them were connected with half loaded onions and they were going to their village only to load the onions. Hence, they cannot be called as owners of the goods, but they were only gratuitous or unauthorised passengers and hence their risk will not be covered. Learned counsel thus submitted that neither pleadings nor evidence give a scope for coverage of policy to the risk of the deceased. He cited the following decisions:

1) ***K.Sareswara Rao v. Kakaraparthi Anjali Devi and***

others[1]

2) ***Ramashray Singh v. New India Assurance Company Limited and others***[2]

3) ***Lokesh v. A.P. Devi and others***[3]

Learned counsel thus prayed to allow the appeal and exonerate the Insurance Company.

6) Per contra, learned counsel for claimants argued that PW2, deceased and some other cultivators travelled in the lorry to go to their village to load the onions sold by them to Pali Subba Reddy and hence though at the time of accident their onions were not present in the lorry, still as they were going to load their respective onions, they can be deemed as owners of respective goods. In this regard, he relied upon the decision reported in ***P.Venkata Ramana v. Chintaguntala Kumari and others***[4]. He further submitted that since the Insurance Company collected additional premium of Rs.50/- under NFPP, it would take care of more than one owner of goods. Since one owner of the goods was already covered under Act policy, the extra premium will cover multiple owners of the goods or their representatives. Learned counsel alternatively argued that even assuming that deceased travelled in the ill-fated lorry only as a gratuitous passenger but not as owner of the goods, still by virtue of Insurance Company collecting additional premium of Rs.50/- under the head Non Fare Paid Passenger (NFPP),

the risk of the deceased would certainly be covered. On this proposition he relied upon the decision reported in ***V.Bhavani v. Manabala Bangaraju and another***[5]. He thus argued that the Tribunal ought to have fixed full liability on the Insurance Company instead of ordering pay and recover. He thus prayed to dismiss the appeal.

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

1. *What is the extent of liability of appellant/Insurance Company in this case?*

2. *To what relief?*

8) **POINT No.1**: Accident, involvement of lorry bearing No.AP 04 T 7207 and death of deceased are not in dispute. It is also not in dispute that crime lorry was insured with appellant/Insurance Company by the date of accident under Ex.B1—policy. Before deciding the liability if any of the Insurance Company with reference to the policy, the controversial issue of capacity in which the deceased travelled in the ill-fated lorry has to be decided.

a) The claimants examined PWs.1 and 2 to speak of various facts including the one relating to the purpose for which deceased travelled in the lorry. Since PW1—the wife of the deceased was not an eye-witness, her evidence is not helpful to decide this issue. Hence, we have to look into the evidence of PW2. He travelled in the lorry and in fact lodged Ex.A1—FIR within short time after accident. Hence the contents in FIR and his evidence can be taken into consideration. They would reveal that PW2, deceased and some others raised onions in their village—China Singanapalli and sold to Pali Subba Reddy of Mydukur. On 13.01.2000 PW2 went to Mydukur and asked the said Subba Reddy to lift the onions purchased by him from the agriculturists of their village. On that the said Subba Reddy entrusted the ill-fated lorry which was already half loaded with onions to PW2 to take it to their village and load the onions. Hence, PW2, deceased and some others boarded the lorry at Mydukur and proceeded to their village and on the way at Gudipadu the lorry capsized. In this backdrop, strictly speaking PW2, deceased and others were not carrying their respective onions at the time of accident. However, they were travelling to their village for loading onions sold by them to Subba Reddy. So, when the purpose of their travelling in the lorry is considered, they cannot be termed as mere gratuitous or unauthorised passengers, rather they can be called as prospective owners of the goods. In this regard, in my view, the decision reported in ***P.Venkata Ramana*** (4 supra) can be profitably applied. In that case, a coolie after unloading the goods while returning in the same goods vehicle met with an accident. In that context, a learned single Judge of this Court observed thus:

"Neither under the Act, nor the Rules made thereunder, there is any condition to the effect that a person engaged as a worker or a Coolie in a goods vehicle must not travel in it, once the loading or unloading of the goods vehicle is over. It is not uncommon that the Coolies or labourers have to be taken along with the vehicles for unloading, and after that work is over, they be brought to the place, from where they were picked up. In holding that the deceased became a gratuitous passenger, in a goods vehicle after he has unloaded the goods, the Tribunal has virtually read something into the provision, which did not exist."

On the same ratio, in my view, the deceased and others who were going to load their onions can be termed as owners of the goods.

b) Now, the question is whether Ex.B1—policy covers the risk of the deceased. A perusal of Ex.B1 shows that it is a comprehensive policy and the insurer collected premium under different heads. Under Section 147 of MV Act even if the policy is issued only as an Act policy or statute policy, it must cover the risk of owner of goods or his representative without insisting payment of any extra premium and therefore, there is no demur that Ex.B1 covers the risk of the owner of the goods or his representative. Here, in view of the fact that there are more than one owner of the goods, the question again is whether the policy covers the risk of only one owner or multiple owners. In this context, classification of premium shows, the insurer collected Rs.50/- under IMT13 to give coverage to non-fare paying passengers. IMT 13 reads thus:

"IMT 13: Legal Liability to Non-fare paying passengers other than Statutory Liability except the Fatal Accidents

Act, 1855 (Commercial Vehicles only)

In consideration of the payment of an additional premium of Rs...... and notwithstanding anything to the contrary contained in Section II-I(b) and (c) it is hereby understood and agreed that the company will indemnify the Insured against his legal liability other than liability under the Statute (except the Fatal accidents Act 1855) in respect of death of or bodily injury to:

(i) any employee of the within named insured who is not a workman within the meaning of the workmen's compensation Act prior to the date of this endorsement and not being carried for hire or reward.

(ii) Any other person not being carried for hire or reward provided that the person is

(a) The owner or representative of the owner of the goods

(b) Charterer or representative of the charterer of the truck.

(c) Any other person directly connected with the journey in one form or other.

Being carried in or upon or entering or mounting or alighting from any Motor Vehicle described in the Schedule of the Policy.

Subject otherwise to the terms exceptions conditions and limitation of this Policy."

Apart from the Act policy, since NFPP (IMT13) again covers the risk of owner or representative of the owner of the goods, it shall be deemed that the payment under NFPP gives coverage to multiple owners of goods and their representatives. So, in my considered view, Ex.B1 covers the risk of the deceased and other owners of the goods. Therefore, the contention of appellant that Ex.B.1 will not cover multiple owners of the goods cannot be accepted. The decisions cited by appellant also can be distinguished on facts.

i) In ***K.Sareswara Rao***'s case (1 supra) the deceased who was a cleaner of the bus bearing No. AP 27 U 1949 died when the bus on its way to Ongole hit a stationed goods transport vehicle. His LRs made a claim before the Commissioner for Workmens Compensation against the owner and insurer of the bus. The contention of the insurer was that the policy covers the risk of 35 passengers + driver but not the cleaner and so it was not responsible for the claim. Accepting the contention, the Commissioner fixed the liability on the owner alone. Hence the owner preferred appeal before the High Court. His contention was that he paid an additional premium of Rs.15/- which will take care of cleaner also and hence Insurance Company is liable. Observing that the additional premium of Rs.15/- was paid against the entry "paid driver/ conductor/ workmen No.1", this Court came to conclusion that the additional premium of Rs.15/- paid by the appellant was to cover the driver over and above the liability covered under Workmens Compensation Act and it would not cover the cleaner. Needless to say, the case on hand is not of this type.

ii) In ***Ramashray Singh***'s case (2 supra) the deceased worked as cleaner in a trucker, a passenger carriage. When the vehicle met with accident, he died, his LRs filed claim petition before the Commissioner for Workmens Compensation. The vehicle was insured for 13 + 1 i.e, 13 passengers and 1 driver. The Commissioner awarded compensation against owner and insurer but High Court of Patna exempted Insurance

Company on the ground that the risk of cleaner was not covered and no extra premium was paid. The appeal was dismissed by the Apex Court confirming the judgment of High Court. In that case the risk of cleaner in a passenger vehicle was not covered and no extra premium was paid. That is not the case here.

9) Now the alternative argument of the learned counsel for respondents/claimants has to be considered. According to him, even if the deceased held as a gratuitous passenger and not as owner of goods, still his risk shall be deemed to be covered by virtue of insured paying additional premium of Rs.50/- under NFPP. He relied on ***V.Bhavani***'s case (5 supra) in this regard. In that case, the deceased and claimants travelled as passengers on an oil tanker and met with accident when it fell into a ditch. In the resultant claims against the owner and insurer, the insurer took the plea that the deceased and claimants were gratuitous passengers in a goods vehicle and so their risk would not be covered. The Tribunal has fixed liability on the owner absolving the Insurance Company. In the appeals and revisions filed by the owner of the vehicle, a learned Single Judge of this High Court having regard to the fact that under Ex.B.1—policy, the owner paid a separate premium of Rs.75/- under Non-Fare Paid Passenger (NFPP) for one person, held that independent of the provisions of the Act, the Insurance Company is under obligation to cover the liability towards one passenger as a contractual obligation.

10) So going by the above ratio, in the instant case also even assuming that the deceased travelled as a gratuitous passenger, still it can be held that his risk is covered in view of the insurer collecting additional premium under NFPP. No doubt in ***Lokesh***'s case (3 supra) cited by appellant, the Karnataka High Court in similar circumstances held that the risk of the claimant would not be covered. However, due to availability of precedent from this Court on the issue, same can be followed in preference to the other.

11) **POINT No.2**: In the result, this MACMA is dismissed by confirming the compensation awarded by the Tribunal. The respondent Nos.1 to 3 in the O.P are directed to deposit compensation amount within two(2) months from the date of this judgment, failing which execution can be taken out against them. No costs in the appeal.

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

U.DURGA PRASAD RAO, J

Date: 28.01.2015
Note: L.R. copy to be marked: Yes/No
Murthy / scs

---

[1] 2013 (5) ALD 351

[2] 2003 ACJ 1550 (SC)

[3] 2013 ACJ 826 (Karnataka)

[4] 2010 (2) ALD 281

[5] 2009 (6) ALD 415