HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.345 OF 2006

JUDGMENT:

The 2nd respondent – M/s United India Insurance Company Limited is the present appellant. Aggrieved of the order, dated 26-09-2005, in O.P. No.1211 of 2001, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – II Additional District Judge (Fast Track Court.I), Khammam (for short 'the Tribunal'), the instant appeal is preferred by the 2nd respondent.

2. By the aforementioned order, the Tribunal has granted a sum of Rs.1,65,000/- as compensation with interest at 7.5% per annum fastening joint and several liability on respondent Nos.1 and 2, who are owner and insurer of Motor Cycle (Bajaj Boxer) bearing registration No.AP 20D 5885. The Insurance Company's main ground is that no premium was paid to cover the risk of pillion rider and, therefore, the Tribunal was not right in fastening the liability on Insurance Company for payment of compensation for the injuries sustained by the petitioner.

3. The appellant herein is respondent No.2 in the O.P. before the Tribunal, while respondent No.1 is petitioner and respondent No.2, who is owner-cum-driver of Bajaj Boxer Motor Cycle bearing registration No.AP 20D 5885, is respondent No.1.

4. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

5. The facts, in brief, are that on 14-07-2001 in the evening hours, the petitioner was proceeding on motor cycle bearing registration No.AP 20D 5885 of respondent No.1 as pillion rider from Pandithapuram village to Manuguru, having crossed the cross-roads, since the 1st respondent made an attempt to avert collision with opposite vehicle, he lost control over the vehicle, as a result, he fell down on road resulting head injury to him. He was admitted in Cure Hospital, Khammam on 15-07-2001 and treated up to 31-07-2001. While averring with reference to the amounts spent by him under various counts, he sought to grant a sum of Rs.3,00,000/- as compensation by laying the claim under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

6. The 1st respondent and the 2nd respondent filed separate counters. The 1st respondent's stand being that since there was valid insurance policy, any amount determined to be paid as compensation, the 2nd respondent alone is obligated with the duty to compensate the petitioner and sought to dismiss the claim against him.

7. The 2nd respondent – insurer while raising various pleas, disputed the coverage of risk of the pillion rider and that has been the main ground agitated by the 2nd respondent.

8. The Tribunal framed three issues basing on the above pleadings. During inquiry before the Tribunal, on behalf of the petitioner, besides examining himself as PW.1, also examined Dr.K. Satyanarayana as PW.2 and marked Exs.A-1 to A-12 as regards his entitlement for compensation. On behalf of the

respondents, RW.1 was examined and marked Ex.B-1 insurance policy issued by it in favour of the 1st respondent.

9. The Tribunal, on appraisal of evidence on record, both, oral and documentary, found issue No.1 in favour of the petitioner holding that due to rash and negligent driving of the rider of the motor cycle i.e., respondent No.1, the accident has occurred.

10. The Tribunal, on issue No.2, while referring to the contentions raised by both sides, more particularly, the stand taken by the Insurance Company placing reliance on the decision a Division Bench of this Court in **New India Asurance Co. Limited, Sangareddy Branch, Medak District v. R.R. Usharani and others**[1], fastened the liability on respondent Nos.1 and 2 to pay the amount of Rs.1,65,000/- as compensation to the petitioner.

11. It is the aforementioned order which is under challenge in the instant appeal, contending in the grounds of appeal that the policy under Ex.B-1 does not cover the risk of petitioner since no premium was paid to cover the risk, but the Tribunal, somehow, overlooked that aspect. It is also stated that the Tribunal somehow, did not properly comply with the judgment of the Hon'ble Supreme Court in **New India Insurance Company Ltd., v. Satpal Singh**[2]**,** which was in respect of passengers carried in a 'goods vehicle' and the words 'any person' referred to by the Hon'ble Supreme Court are not applicable for a pillion rider carried on a motor cycle. The other grounds were also agitated which are not of that much significance in deciding the controversy as regards the quantum of compensation determined by the Tribunal.

12. Heard Sri V. Sambasiva Rao, learned counsel for the appellant and Sri P. Prabhakar Reddy, learned counsel for respondent No.1. None appears for respondent No.2, despite service of notice.

13. The only question involved in the instant appeal is, whether any premium was paid covering risk of the pillion rider?

14. The learned counsel for the appellant while referring to the copy of policy marked as Ex.B-1, drawn the attention of this Court to contents of the policy. On perusal of the same, it clearly reflects that no premium was paid to cover risk of the pillion rider. The learned counsel also placed reliance on the decision of a Division Bench of this Court in **Branch Manager, United India Insurance Co. Ltd., Kamareddy, Nizamabad District v. Kondakotla Saroja and others**[3], for the proposition that the Insurance Company can not be held liable to pay compensation for the death of deceased when no extra premium was paid to cover passengers who have travelled in the accident jeep while referring to the policy being 'Act Policy'. Since the observations contained in paragraph No.15 are relevant in the present context, the same is extracted thus:

> "15. The Supreme Court in *United India Insurance Co. Ltd. v. Tilak Singh, 2006 (3) ALd 75 (SC) = (2006) 4 SCC 404,* after referring to the judgment in *T.V. Jose (Dr.) v. Chacko P.M.,* (2001) 8 SCC 748 = 2002 SCC (Cri) 94, wherein *Variava*, J., had an occasion to survey the law with regard to the liability of Insurance Companies in respect of gratuitous passengers, held as under:
>
> "In our view, although the observations made

in *New India Assurance Co. Ltd. v. Asha Rani* 2003 (1) ALD 18 (SC) = (2003) 2 SCC 223 = 2003 SCC (Cri) 493, were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also". "

15. The learned counsel for the 1st respondent having perused Ex.B-1 fairly concedes that it is an 'act policy' and risk of the pillion rider was not covered. In that view of the matter, appeal has to be allowed.

16. In the result, the appeal is allowed, setting aside the order and decree, dated 26-09-2005, in O.P. No.1211 of 2001, passed by the Tribunal in so far as fastening liability on the 2nd respondent – M/s United India Insurance Company Limited, which is appellant herein, is concerned. Except to that extent, the order under challenge is not interfered with. In case any amount is deposited by the Insurance Company and withdrawn by the petitioner, the appellant - Insurance Company is at liberty to recover the same from the owner – 1st respondent.

17. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

February 26, 2015.
Mgr

[1].LC ACR 2004 (1) AP 153

[2]. 2000 ACJ 1

[3]. 2008 (5) ALD 288 (DB)