HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.726 OF 2009

JUDGMENT:

This appeal is filed by the insurance company challenging the judgment and award dated 21.7.2006 passed in M.V.O.P. No.771 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Guntur.

2. The parties will hereinafter be referred to as they are arrayed before the Tribunal for the sake of convenience.

3. The facts leading to filing of the present appeal, in brief, are as follows: On 04.7.20002 the petitioner along with his relatives hired mini lorry bearing No.ATG 81 belongs to the first respondent to carry dead body of Megavath China Naik from Chilakaluripet to Lalpuram. When the lorry reached Lingamguntla Pumphouse, driver of the mini lorry had driven the same in a rash and negligent manner due to which the mini lorry turned turtle. The accident occurred due to rash and negligent driving of the driver of the mini lorry against whom the Station House Officer, Chilakaluripet Rural Police Station registered a case in Crime No.90 of 2002 under Sections 337 and 304-A IPC. Due to the accident, the petitioner sustained injuries and therefore he could not attend the work. The petitioner spent huge amount towards medicines. The mini lorry, which belongs to the first respondent, was insured with the second respondent with effect from 19.12.2001 to 18.12.2002. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2,00,000/- to the petitioner with interest and costs.

4. Respondent No.1 filed counter denying all the averments made in the petition *inter alia* contending that the driver of the mini lorry had not obtained prior permission of this respondent for transporting the dead body along with petitioner and others. Therefore, the first respondent is not liable to pay compensation to the petitioner.

5. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that the lorry in question was not insured with the second respondent. At the time of the accident, the petitioner and others were traveling in the lorry as unauthorized passengers. The first respondent had violated

the terms and conditions of the policy by allowing the petitioner and others to travel in the mini lorry, which is a goods vehicle. For such violation, the second respondent is not liable to pay compensation to the petitioner. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition is liable to be dismissed so far as the second respondent is concerned.

6. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred due to rash and negligent driving of Mini Lorry bus (*sic.,* Mini Lorry) bearing No.ATG 81 by its driver or not?

2. Whether the petitioner is entitled to compensation and if so, to what amount, from whom?

3. To what relief?

7. During the course of the trial, on behalf of the petitioner, P.W.1 was examined and Exs.A1 to A4 were marked. On behalf of the second respondent, R.W.1 was examined and Exs.B1 to B3 were marked.

8. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the mini lorry, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.15,000/- with interest at 6% per annum, directing the respondent Nos.1 and 2 to deposit the compensation, and granting liberty to the second respondent to recover the amount from the first respondent. Feeling aggrieved by the judgment and award, the second respondent preferred the present appeal.

9. Respondent Nos.1 and 2 having received notices in this appeal did not choose to contest the matter. Hence, I am inclined to dispose of the appeal on merits.

10. Heard Sri T.Ramulu, learned standing counsel for the appellant – second respondent. The predominant contention of the learned counsel for the appellant is that the first respondent had violated the terms and conditions of the policy and therefore, the second respondent is not liable to pay compensation to the petitioner. He further submitted that the Tribunal failed to appreciate that at the time of the accident, the petitioner and others were traveling in the goods vehicle as unauthorized passengers.

11. Now the point that arises for consideration in this appeal is:

Whether the first respondent had violated the terms and conditions of the policy so as to absolve the liability of the second respondent – appellant?

Point:

12. As per the finding of the Tribunal, on issue No.1, the accident occurred due to rash and negligent driving of the driver of the mini lorry, which resulted in injuries to the petitioner. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the mini lorry, which resulted in injuries to the petitioner.

13. As per the averments made in the petition on the date of the accident, the petitioner and others have engaged the mini lorry, which belongs to the first respondent, for transportation of the dead body of Megavath China Naik from Chilakaluripet to Lalpuram. As per the averments made in the counter, without consent of the first respondent – owner of the mini lorry, the driver of the offending vehicle used it for transportation of the dead body, petitioner and others. Absolutely there is no material on record to establish that the petitioner and his relatives have engaged the mini lorry of first respondent for transportation of the dead body, petitioner and others.

14. The oral testimony of P.W.1 coupled with Ex.B1 reveals that the crime vehicle is a goods vehicle. A perusal of Ex.B1 reveals that the first respondent paid an amount of Rs.15/- for covering the risk of Non Fare Paid Passengers (NFPPs). The first respondent also paid Rs.15/- for covering the risk of two employees. It is not the case of the petitioner that as on the date of the accident, himself and others were engaged as coolies in the lorry. Non Fare Paid Passenger means the owner of the goods or authorized representative of the owner of the goods. It is also not the case of the petitioner that on the date of the accident, he was traveling in the lorry as owner of the goods or authorized representative of the owner of the goods. The definition “goods”, as contemplated under Section 13(2) of the Motor Vehicles Act, does not cover human dead body. The lorry in question was meant for the purpose of carriage of goods. Ex.B1 policy does not cover the risk of the persons, who are traveling in the goods vehicle along with the dead body. The liability of the

insurance company arises out of a contract or under a statute. There is no statutory obligation on the part of the insurance company to pay compensation in case of death or injuries to the unauthorized passengers traveling in the goods vehicle. As observed earlier, the terms and conditions of the insurance policy does not cover the risk of persons traveling in the goods vehicle as gratuitous passengers or unauthorized passengers. In the instant case, there is no statutory or contractual liability on the part of the second respondent to indemnify the liability of the first respondent, who admittedly violated the terms and conditions of the policy. The Tribunal fastened the liability on the second respondent on the ground that the first respondent paid an amount of Rs.15/- covering the risk of NFPPs. The fact remains that the petitioner will not fall within the definition of NFPP.

15. As per the principle enunciated in **New India Assurance Co. Ltd., v Asha Rani**, **Oriental Insurance Co. Ltd., v Devireddy Kondareddy**, **National Insurance Co. Ltd., v Baljit Kaur**, **Manager, National Insurance Co. Ltd., v Saju P. Paul**, **M.V. Jayadevappa v Oriental Fire & Insurance Co. Ltd.,** and **National Insurance Co. Ltd., v Bommithi Subbhayamma**, there is no statutory or contractual obligation on the part of the insurance company to indemnify the liability of the insured in case of death or injuries of gratuitous passengers. This court also in a recent judgment in **Nagula Tulasamma v Golangi Bhoopathi**, by following the decisions in **Deddula Padmavathi v Maddala Srinivasa Rao** and **T.Hanumantha Rao v Motepalli Venkataratnam**, held, in para-19,as follows:

> 19. The above two decisions are aptly applicable to the facts of the present case and the deceased are unauthorized passengers traveled in the van. Therefore, the insurance company is not liable to pay the compensation to the appellants as rightly held by the Tribunal.

16. Having regard to the facts and circumstances of the case, I am of the considered opinion that the finding of the Tribunal that Ex.B1 covers the risk of the petitioner is not sustainable either on facts on or on law and, therefore, the said finding is liable to be set aside. As observed earlier, since the petitioner has not filed any appeal seeking enhancement of quantum of compensation, this court is not inclined to modify the quantum of compensation awarded by the Tribunal. As the liability of the second respondent is absolved, the first respondent is alone liable to pay compensation to the petitioner. Accordingly, this point is answered in favour of the appellant – insurance company.

17. In the result, the appeal is allowed setting aside the judgment and award of the

Tribunal fastening the liability on the second respondent-insurance company. The first respondent alone is liable to pay compensation to the petitioner. If the petitioner has already withdrawn the amount, the second respondent is entitled to recover the same from the first respondent and not from the petitioner. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 09.3.2015

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