THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.2860 of 2009

JUDGMENT:

Aggrieved by the Award dt. 09.04.2008 in M.VO.P.No.1465 of 2006 passed by the Chairman, MACT-cum- District Judge, Khammam (for short "the Tribunal), the 2nd respondent/Insurance Company in the OP preferred this instant appeal.

2) The factual matrix of the case is thus:

a) On 25.07.2006 at about 9.00 am the claimant was travelling in the lorry bearing No. AP Q 8418 as a coolie for loading and unloading the husk, on the way on N.H-9 road at Shaik Saida's air filling shop, the driver of the lorry drove the same in a rash and negligent manner at high speed and lost control over the vehicle and dashed against one Ponna Sreenu, who was standing there. In the resultant accident, the claimant, who was sitting over the cabin of the crime vehicle, fell on the ground and sustained injuries all over the body. Thereafter, he was shifted to Vasanthi Orthocare and Trauma Hospital, Kodada, where he underwent surgery to his right hip joint with interlocking nail. It is averred that lorry driver was responsible for the accident. On these averments, the claimant filed M.V.O.P.No.1465 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short "M.V Act") against respondent

Nos. 1 and 2 being the Owner and Insurer of the crime vehicle and claimed Rs.2,00,000/- as compensation under different heads mentioned in OP.

b) Respondent No.1 remained *ex parte*.

c) Respondent No.2 filed Counter denying all material averments made in the petition and urged to put the claimant in strict proof of the same. It is contended that that there is no negligence on the part of the driver of the lorry. It is further contended that the claimant travelled in the vehicle as gratuitous passenger and as such, the Insurance Company is not liable to pay compensation. It is further contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A9 were marked on behalf of the claimant. On behalf of respondents, Rw.1 was examined and Ex. B.1 was marked.

e) The Tribunal, on appreciation of oral and documentary evidence, has awarded a sum of Rs.58,000/- with costs and interest at 7.5% p.a under different heads as follows:

Fracture of right hip joint	Rs. 35,000-00
Simple Injury	Rs. 02,000-00
Future operation	Rs. 05,000-00
Medical Expenses	Rs. 16,000-00
Total	Rs. 58,000-00

Hence, the appeal by the Insurance Company.

3) Heard arguments of Sri E. Venugopal Reddy, learned counsel for appellant/insurance company and Sri S. Chalapathi Rao, learned counsel for respondent No.1. Notice sent to R.2 was returned unserved.

4) The parties in this appeal are referred as they are arrayed before the lower Tribunal.

5) Learned counsel for appellant/Insurance Company challenged the Award mainly on the contention that the claimant travelled in the crime lorry only as an unauthorized passenger and therefore his risk is not covered under the terms of Ex.B.1—Policy, but the Tribunal erroneously held that he travelled as a coolie and hence he was covered under the policy and awarded compensation. Referring Ex.B.1—Policy, he submitted that it is an Act only policy whereunder premium was paid to cover 3rd party risk and the risk of two employees to the extent of Workmen Compensation Act and those two employees are the driver and cleaner and therefore even if for argument sake it is admitted that the claimant travelled in the lorry as a coolie, still his risk will not be covered and therefore, first respondent/owner in the OP alone is liable to pay compensation. He, thus, prayed to allow the appeal by exonerating the Insurance Company.

6) Per contra, while supporting the Award, learned counsel for R.1/claimant argued that the claimant travelled in the

vehicle not as a gratuitous or unauthorized passenger but as a coolie to load and unload the husk and recognizing the same, the Tribunal rightly held that his risk is covered under the terms of the policy. He, thus, prayed to dismiss the appeal.

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

"Whether the Award of the Tribunal fastening liability on Insurance Company is factually and legally sustainable?"

8) **<u>POINT:</u>** The accident, involvement of the lorry bearing No.AP Q 8418 and the claimant suffering injuries are not in dispute. The bone of contention is about the Tribunal's fixing liability on insurance company along with insured. The contention of appellant, as stated supra, is that the claimant travelled in the vehicle as an unauthorized passenger and hence, his risk is not covered under the terms of the policy. Alternatively, even assuming he was a coolie, still his risk is not covered because the policy in question is an Act policy whereunder premium was paid to give coverage to 3rd party (basic premium) and to two employees to the extent of Workmen Compensation Act and those two employees should be understood as driver and cleaner of the lorry. Learned counsel for appellant/insurance company thus sought to project terms of Ex.B.1—Policy as not covering the risk of the claimant even if he were treated as a coolie. In the light of the above arguments, two crucial aspects come up for

consideration; firstly, in what capacity he travelled in the vehicle and secondly whether the Policy covers his risk.

a) Since inception, the claim of the claimant was that he was engaged by the lorry owner to load and unload the husk and hence he was proceeding in the lorry from Kodada to Vizayawada and on the way the lorry met with an accident. In Ex.A.2—Charge sheet, the police after investigation referred the claimant as a coolie being engaged by LW.6 i.e., owner of the lorry for loading and unloading of the husk carried in the lorry. Therefore, the plea of the claimant gets corroboration from Ex.A.2-Chargesheet. Hence, it is evident that claimant travelled in the crime lorry as a coolie but not as an unauthorized passenger. The insurance company has not produced any contra evidence to impeach the credibility of the contents in Ex.A.2—Chargesheet.

b) Now, a perusal of Ex.B.1—Policy shows that no doubt it is an Act Policy. The schedule of premium shows that the insured paid premium on two counts i.e., a basic premium of Rs.3580/- to extend coverage to 3rd parties and he also paid Rs.50/- to extend coverage to two employees to the extent of Workmen Compensation Act. As rightly argued, these two employees are driver and cleaner. No extra premium is paid to give coverage to the risk of the claimant, who travelled as loading and unloading coolie. Therefore, premium of Rs.50/- paid towards two employees will not give coverage to the claimant. The decision reported in ***Jamparapu Jeevamma and others vs. Sanapalli Veera Reddy and another***[1] relied upon by the Tribunal to mulct the insurance company with liability can be distinguished on facts. In that case, the deceased and others travelled as coolies in a tractor, which met with an accident. The Insurance Company's admitted case was that though it is an Act Policy, as per the terms of the Policy, apart from the driver six employees can travel, but contrary to it, seven persons travelled besides the driver and the deceased was only an unauthorized passenger and hence the policy will not cover their risk due to breach of the terms of the policy. A learned Judge of this Court observed that the limitation regarding the number of persons fixed earlier at 6 under Section 147 of M.V.Act was subsequently removed when the Act amended in 1994 and the Policy was issued subsequently in 1997 and therefore, restricting the liability to six employees is invalid. Further, it was held deceased travelled as Coolie but not as an unauthorized passenger. So by facts in that case policy was held to cover more than six employees apart from driver. However, in this case, the vehicle being the lorry and the policy issued is an Act Policy and under Section 147 of M.V.Act, it covers the risk of the driver and the person being carried in the vehicle i.e., cleaner only. The premium being paid only to give coverage to two employees, as such, the driver and cleaner fills this slot. Therefore, the said premium will not come to the benefit of the claimant. To this extent, the argument of learned counsel for appellant is correct.

9) However, that is not the end of the matter. In my considered view, the policy still covers the risk of the claimant not as a coolie but as a 3^{rd} party. Exs.A.1 and A.2 would show that when the lorry driver hit a standing person, the claimant, who was sitting on the load of husk thrown away and fell down and suffered injuries. Therefore, the claimant received injuries as a 3^{rd} party. In such circumstances, the policy which covers the risk of 3^{rd} parties, shall invariably cover his risk. We have a catena of decisions on this aspect. I n ***National Insurance Company Limited vs. Zuleka Begum***[2], this Court in similar circumstances referring to the cases cited in ***United India Insurance Company Limited rep. by its Branch Manager vs. Kurva Yejju Mallamma and others***[3], ***A. Subramani vs. Mani and others***[4]***, Kanwar Shamsher Singh and others vs. Satbir Singh and others***[5]***, Thoznilalar Transport Company vs. Valliammal and others***[6] *and* ***Oriental Insurance Co. Ltd. and another vs. Edward D'Cruz and others***[7]***,*** has held that when a person who fell down from a vehicle and injured will no longer remain as a passenger but a third party and in such event the policy shall invariably cover his risk. Therefore, in that view of the matter, it can be said that the risk of the claimant is

covered by Ex.B.1. Therefore, the Insurance company cannot claim exemption from liability.

10) In the result, this MACMA filed by the Appellant/Insurance Company is dismissed and the respondents in the OP are directed to deposit the 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: 29.10.2015
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[1] 2008(1) ALD 723

[2] 2015(1) ALT 162

[3] 2007 ACJ 1735 (AP) = 2007 (1) ALD 364

[4] 1990 ACJ 37 (Madras)

[5] 2006 ACJ 789 (Delhi)

[6] 1990 ACJ 201 (Madras)

[7] 1995 ACJ 1106 (Bombay)