HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.1615 of 2009

JUDGMENT:

Feeling aggrieved by the judgment and award dated 23.4.2008 passed in O.P. No.146 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, West Godavari District, Eluru, the insurance company preferred this appeal.

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 23.5.20004, Dr.Sunitha along with her family members and servant-maid was proceeding to Hyderabad from Jangareddigudem in Ambassador car bearing No.AP 37S 4554. When the car reached near Satyasai Petrol bunk, Chityala, on 24.5.2004 at about 4.45 A.M., the driver of the car had driven the same in a rash and negligent manner and dashed against the lorry bearing No.GJ 10U 3800. The Station House Officer, Chityala Police Station registered a case in crime No.69 of 2004 under Sections 304-A and 337 IPC against the driver of the car–first respondent. In the accident, the inmates of the car received grievous injuries. The petitioner sustained head injury and her face was disfigured. The servant-maid died while taking to hospital. The petitioner was shifted to Kamineni Hospital, Hyderabad. She spent huge amount towards plastic surgery of face, treatment and medicines. The car, which belongs to the second respondent, was insured with the third respondent respondent. Therefore, the respondent Nos.1 to 3 are jointly and severally liable to pay compensation of Rs.2,50,000/- to the petitioner with interest and costs.

4. The respondent Nos.1 and 2 remained *ex parte*. The third

respondent–insurance company filed counter denying all the material averments made in the petition, *inter alia*, contending that this respondent is not liable to pay compensation to the petitioner unless the petitioner proves that the first respondent – driver of the car was having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. The second respondent violated the terms and conditions of the policy and therefore, the petition is liable to be dismissed against this respondent.

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

1) Whether the petitioner/injured sustained injuries in a motor vehicle accident on 24.5.2004 due to rash and negligent driving of the car bearing No.AP 37S 4554 driven by the first respondent?
2) Whether the petitioner is entitled to claim compensation? If so, to what amount and from which of the respondents?
3) To what relief?

6. During the course of the trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A9 were marked. On behalf of the third respondent, no oral evidence was adduced, but Ex.B1 was marked.

7. 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 car, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.1,11,000/- with interest at 7.5% per annum, directing the respondent Nos.1 to 3 jointly and severally pay the compensation. Hence, the third respondent preferred the present appeal.

8. Heard Sri T.Ramulu, learned standing counsel for the appellant – third respondent and Sri Kambhampati Ramesh Babu, learned

counsel for the claimant – petitioner.

9. The contention of the learned counsel for the appellant is two fold:

(1) Ex.B1 policy does not cover the risk of inmates of the car; and

(2) The Tribunal wrongly fastened the liability on the insurance company even though the owner of the offending vehicle had violated the terms and conditions of the policy.

Per contra, the learned counsel for the claimant submitted that Ex.B1 policy covers the risk of the inmates of the car. He further submitted that the Tribunal awarded just and reasonable compensation and therefore, there are no grounds much less legally valid grounds to interfere with the judgment and award of the Tribunal.

10. Now the points that arise for consideration in this appeal is:

> *(1) Whether Ex.B1 policy does not cover the risk of inmates of the Ambassador car? And*
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> *(2) Whether the second respondent had violated the terms and conditions of the policy so as to absolve the liability of the third respondent – insurance company?*

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<u>Point Nos.1 and 2</u>:

11. The point Nos.1 and 2 are interlinked with each other and hence I am inclined to address these two points simultaneously in order to avoid confusion and repetition.

12. As per the finding of the Tribunal, on issue No.1, the accident occurred due to rash and negligent driving of the first respondent–driver of the car, which resulted in the 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 record to the facts and circumstances of the case, this court is of the considered view that the accident

occurred due to the rash and negligent driving of the first respondent–driver of the car, which resulted in the injuries to the petitioner.

13. The claimant filed the petition claiming a compensation of Rs.2,50,000/-. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the petitioner is entitled for an amount of Rs.1,11,000/-. The claimant has not filed any appeal or cross-objections challenging the quantum of compensation. Hence, I am of the considered view that the quantum of compensation awarded by the Tribunal is just and reasonable to meet the ends of justice.

14. It is not in dispute that on the date of the accident, the petitioner along with her family members was proceeding to Hyderabad from Jangareddigudem in the car. The oral testimony of R.W.1 coupled with Ex.B1 reveals that the crime vehicle was insured with the third respondent – insurance company with effect from 03.3.2004 to 02.3.2005. The policy was in force as on the date of the accident i.e., on 24.5.2004. A perusal of Ex.B1 reveals that the crime vehicle was registered as a private car. Admittedly on the date of the accident, neither the owner nor the family members of the car-owner were traveling in the car. The crucial question that falls for consideration is whether Ex.B1 policy covers the risk of inmates of the car. A perusal of Ex.B1 policy clearly reveals that the second respondent-owner of the car obtained B-package policy by paying a premium of Rs.15,292/-. The fact remains that the second respondent had obtained a comprehensive policy. In order to resolve the issue, this court is placing reliance on the decision in **National Insurance Co. Ltd., v Balakrishnan**[1]. Paras 25 and 26 are relevant, which read as under:

> **25.** It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus: (*Yashpal Luthra v United India Insurance Co.*[2], ACJ p. 1424, para 27)

> "*27.* In view of the aforesaid, it is clear that the comprehensive/package policy of a two-wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for the Motor Accidents Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."

> **26.** 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 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 *Bhagyalakshmi v United Insurance Co. Ltd.*[3]*,* 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 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.

As per the principle enunciated in the case cited supra, package or comprehensive policy covers the risk of inmates of the car.

15. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am unable to accede to the contention of learned counsel for the third respondent that Ex.B1 policy does not cover the risk of the inmates of the car. There are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal. Accordingly, these points are answered against the appellant-insurance company.

16. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 18.3.2015
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[1] (2013) 1 SCC 731
[2] 2011 ACJ 1415 (Del)
[3] (2009) 7 SCC 148