THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.1288 of 2009

JUDGMENT:

Aggrieved by the Award dated 20.12.2007 in M.V.O.P.No.440 of 2003 passed by the Chairman, MACT-cum-I Additional District Judge, Chittoor (for short "the Tribunal"), the 2nd respondent in the OP/ Oriental Insurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant is that on 12.06.2003 at 10.30 AM, when he was traveling in the tractor bearing No.AP 03 T 3424 with trailer bearing No.AP 03 T 3426 as loading and unloading coolie and when the said tractor reached near Bandalapalle Harijanawada on Damalcheruvu—Pakala road, the driver of the tractor drove the same in a rash and negligent manner and at high speed, due to which the trailer got disconnected and fell down and the claimant and other coolies sustained multiple injuries. The claimant suffered fracture of both bones of left leg, dislocation of left humerus. Immediately he was shifted to Government Hospital, Chittoor and thereafter shifted to SVRR Hospital, Tirupati for better treatment where he underwent treatment as an inpatient for three months by spending huge amount and his left leg was amputated upto the knee. It is averred that the accident was occurred due to the fault of driver of the offending tractor. On these pleas, the claimant filed M.V.O.P.No.440 of 2003 under Section 166 of Motor Vehicles Act, 1988 (for short "M.V.Act") and claimed Rs.5,00,000/- as compensation against respondents 1 and 2 who are owner and insurer of the offending tractor.

b) Respondent No.1 in his counter stated that due to unexpected mechanical defect, the trailer got detached from the tractor and hence there is no fault on the part of driver of the tractor. R1 denied the injuries sustained by the claimant and amputation of his left leg upto knee. R1 stated that the claimant was employed as loading and unloading coolie and the policy issued by the Insurance Company was in force and it covers his risk and therefore, he is not liable to pay any claim.

c) Respondent No.2/Insurance Company filed counter and contended that there is no negligence on the part of driver of the tractor and it denied the age, avocation and income of the claimant. R2 denied that claimant as loading and unloading coolie and contended he was only gratuitous passenger and even assuming that policy was in force, it is not liable to pay compensation. He thus prayed to dismiss the O.P.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A4 were marked and Ex.X1—case sheet was exhibited on behalf of claimant. RW1 was examined and Ex.B1 was marked on behalf of 2nd respondent.

e) The Tribunal considering the oral and documentary evidence held that driver of the tractor was responsible for the accident and awarded Rs.3,27,500/- with proportionate costs and interest at 7.5% p.a. under different heads as follows:

Pain and suffering	Rs.	10,000-00
For fracture injuries	Rs.	50,000-00
Loss of earnings	Rs.	10,000-00
Transport and extra-nourishment	Rs.	4,000-00
Attendant charges	Rs.	6,000-00
For 55% disability	Rs.	2,47,500-00
Total:	Rs.	3,27,500-00

Hence, the appeal by Insurance Company.

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

4) Heard arguments of Sri Naresh Byrapaneni, learned counsel for appellant/Insurance Company, Sri A.Purushotham Reddy, learned counsel for R1/claimant and Sri G.V.L.Murthy, learned counsel for R2/owner.

5a) Learned counsel for appellant/Insurance Company challenged the award mainly on two grounds. Firstly, that injured travelled in the tractor-cum-trailer only as a gratuitous passenger and therefore, his risk will not be covered under the terms of the policy. Alternatively, even assuming that he travelled as a loading and unloading coolie as claimed by him, still the Insurance Company holds no liability because R1 has not paid any extra premium to give extra coverage to the coolies travelled in the trailer. Taking the Court to the schedule of the premium, learned counsel strenuously argued that the policy intended to cover the risk of third parties under basic liability premium and personal accident cover to the owner-cum-driver and as no premium is paid for the coolies, the risk of claimant will not be covered even assuming that he travelled in such capacity. On this main ground learned counsel sought to exempt the Insurance Company from liability. He argued that unfortunately the lower Tribunal did not consider this aspect and fasten the Insurance Company with liability erroneously placing its reliance on the decision reported in ***New India Assurance Company Limited v. Kistamma***[1] which has no relevancy. He submitted that in that case the fact of non-payment of premium to the coolies had not come up for consideration and so the said decision has no application.

b) Secondly, challenging the quantum of compensation, he argued that the Tribunal while awarding Rs.2,47,500/- for loss of earning power due to 55% disability erred in awarding another sum of Rs.50,000/- for the fracture injuries which is nothing but repetition. He thus prayed to allow the appeal.

6a) Per contra, learned counsel for R1/claimant while supporting the award argued that the evidence clearly shows that claimant travelled as coolie to unload the mangoes and therefore, it is preposterous to contend that he was gratuitous passenger. He submitted that in that capacity his risk under Ex.B1—policy is well covered.

b) Secondly, he contended that compensation of Rs.50,000/- awarded for fracture injuries is not a duplication inasmuch as Rs.50,000/- was awarded for the injuries whereas Rs.2,47,500/- was awarded for the loss of earning power due to disability and both heads are quite different and he thus prayed to dismiss the appeal.

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

"Whether the award passed by the Tribunal is factually and legally sustainable?"

8a) **<u>POINT</u>**: Accident, involvement of tractor bearing No.AP 03 T 3424 and trailer bearing No.AP 03 T 3426 and injuries suffered by the claimant are admitted facts. The first contention raised by the appellant to exonerate from the liability is that the risk of claimant either as gratuitous passenger or as a coolie will not be covered under Ex.B1—policy. In this context, the pleadings and evidence would amply establish that the claimant travelled in the ill-fated tractor-cum-trailer as a coolie but not a gratuitous passenger. His version is that he went along with others for loading and unloading of mangoes. The first respondent/owner in his counter admitted that claimant was employed as coolie for loading and unloading of mangoes. Apart from his admission, in Ex.A1—FIR which was registered within short time after accident, it was mentioned that claimant and others were engaged as coolies for loading the mangoes. Therefore, the contention of Insurance Company that the claimant was only a gratuitous passenger cannot be accepted. Now, it has to be seen whether Ex.B1—policy covers the risk of the claimant as a coolie. Ex.B1 shows that first respondent insured the tractor-cum-trailer and paid premium to give coverage to the risk of third party under basic liability and also paid premium for personal accident of owner and driver. As rightly contended by learned counsel for appellant, R1 did not pay premium for the coolies. To that extent the argument of counsel for appellant is correct. The Tribunal having come to the conclusion that claimant travelled as a coolie held that his risk is covered by relying on the decision of this Court in ***Kistamma***'s case (1 supra). In that case, in the context of death of deceased while traveling in a tractor-cum-trailer as a coolie held that since accident was occurred during the course of employment in the employer's vehicle, his risk is covered under Section 51-C of Employees' State Insurance Act, 1948. In that decision the aspect as to payment or non-payment of premium to coolie has not come up for discussion. Therefore, in my considered view, the said decision has no application in the context of argument raised by the learned counsel for appellant/Insurance Company. As already stated supra, R1 did not pay premium for the coolies and so the risk of the claimant as a coolie will not be covered. To this extent, the argument of learned counsel for appellant is right. However, that is not the end of the matter. The record would show that the claimant travelled also in a different capacity apart from as a coolie. Ex.A1—FIR reads when the tractor-cum-trailer was proceeding to Damalcheruvu on Pakala road and reached near Bandarlapalle Harijanawada, the driver drove the vehicle in a rash and negligent manner and thereby the hook of the trailer was broken and coolies fell on the road and suffered injuries. In the pleadings and in evidence he mentioned in similar manner. So, it goes to show that the claimant and others fell down from the trailer when the hook was broken and detached. In that view of the matter, it can be said that they met with the accident as third parties after they disembarked from the vehicle. Since they suffered injuries as third parties, Ex.B1—policy would squarely cover their risk. In similar circumstances, our High Court in a decision reported in ***United India Insurance Company Limited rep. by its Branch Manager v. Kurva Yejju Mallamma***[2] held that the risk of the injured would be covered as third parties. In that case, when the deceased was getting down from the lorry, the driver suddenly moved the same in a rash and negligent manner and thereby the deceased suffered severe injuries and succumbed to death on the spot. In the resultant claim petition, the Insurance Company sought to repudiate its liability on the contention that the deceased being a gratuitous passenger, policy would not cover his liability. In that context, a learned single Judge of this Court following the decisions reported in

1) ***A. Subramani vs. Mani and others*** [3]
2) ***Kanwar Shamsher Singh and others vs. Satbir Singh and others*** [4]
3) ***Thoznilalar Transport Company vs. Valliammal and others*** [5]
4) ***Oriental Insurance Co. Ltd. and another vs. Edward D'Cruz and others*** [6]

has held thus:

> *"13. That having regard to aforesaid principles, the only conclusion which can be arrived in this case is that the deceased no longer remains as a passenger, either gratuitous or otherwise, but wholly stands on the footage of a third party. Therefore, there is no substance in the plea raised by the appellant/insurance-company and there is no escape from its liability."*

The ratio in the above and other aforesaid mentioned decisions is that when a person while getting into or alighting from a vehicle fell down and injured, he will no longer remain as a passenger but a third party. While the above ratio is applied to the instant case, the facts would show that the claimant and others have not received injuries when they were moving in the trailer along with tractor but they received injuries after they fell down on the road and totally disembarked from the tractor-cum-trailer. Therefore, the claimant can be treated as a third party. Ex.B1—policy squarely covers the risk of third parties since the premium was paid to meet such eventuality.

Hence, there is no reason to exonerate the Insurance Company from its liability.

b) The next argument on quantum of compensation is concerned, it is true that Tribunal awarded Rs.50,000/- for fracture injuries to the left leg and left humerus of the claimant and another sum of Rs.2,47,500/- for loss of earning power due to amputation of left leg resulting in 55% disability. The argument of learned counsel for appellant is that the Tribunal having awarded compensation for loss of earning power ought not to have awarded Rs.50,000/- for injuries which is nothing but duplication. I see no much force in it. Compensation for loss of earning power was awarded because of the amputation of left leg and consequent disability, whereas Rs.50,000/- was awarded for multiple fracture injuries i.e. fracture to the both bones of left leg and fracture to left humerus. It means the former compensation was for the affect of disability on the earning capacity whereas the latter compensation was for the injuries proper. The latter compensation can be even treated as towards loss of basic amenities because the claimant has to depend on other for his day-to-day activities due to amputation of his left leg. So, compensation cannot be said to be repetitive or excessive.

9) In the result, this MACMA filed by the Insurance Company is dismissed by confirming the award passed by the Tribunal in M.V.O.P.No.440 of 2003. No costs in the appeal.

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

U.DURGA PRASAD RAO, J

Dt: 18.11.2015

Murthy

[1] 2001 ACJ 516 (AP)

[2] 2007 ACJ 1735 (AP)

[3] 1990 ACJ 37 (Madras)

[4] 2006 ACJ 789 (Delhi)

[5] 1990 ACJ 201 (Madras)

[6] 1995 ACJ 1106 (Bombay)