IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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M.A. C.M.A. No.1478 of 2005

Between:

United India Insurance Co. Ltd.

… Appellant

and

T.Uttama Reddy and another

… Respondent (s)

DATE OF JUDGMENT PRONOUNCED: **16th July 2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SMT JUSTICE ANIS

1	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2	Whether the copies of judgment may be marked to Law Reports/Journals	Yes/No
3	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

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The HON'BLE SMT JUSTICE ANIS

M.A. C.M.A. No.1478 of 2005

J U D G M E N T :

This appeal is filed by the appellant/2nd respondent under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'),aggrieved by the Judgment and Decree dated 20.09.2004, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum- District Judge, Ananthapur in O.P.No.444 of 2000, awarding compensation of Rs.31,000/-

2. The 1st respondent filed the above O.P under Sections 140 and 166 of the Act, claiming compensation of Rs.50,000/- for the injuries sustained by him in a motor vehicle accident, that occurred on 06.07.1999.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 06.07.1999 at about 8.15 p.m., petitioner boarded a jeep bearing No.AP 03 D 1877 at Ragannagari village bus stop to go to Kadiri and the driver of the jeep drove the vehicle in rash and negligent manner and dashed against a lorry bearing No.AP 02 U 977 which was coming in opposite direction. Due to the accident, petitioner sustained injuries and he was shifted to Government Hospital, Anantapur for treatment. Petitioner stated that he was aged about 52 years and working as a foreman and earning Rs.5,853/- per month. Therefore, prayed the Court to grant compensation of Rs.50,000/- against respondents 1 and 2.

5. The Respondent No.1 remained ex-parte.

6. The brief averments made in the written statement filed by the 2nd respondent are as follows :

The 2nd respondent put the petitioner to prove the manner of the accident, the age and income of the petitioner and the alleged negligence on the part of the driver of the offending vehicle. It is further stated that the claim of Rs.50,000/- towards compensation is excessive and exorbitant and denied all the allegations made in the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner got examined

himself as P.W.1 and got marked Exs.A1 to A5 on his behalf. On behalf of the 2nd respondent-insurance company, RW1 was examined and Ex.B1 insurance policy was marked.

8. The Tribunal after considering the oral and documentary evidence on record, held that the accident occurred due to rash and negligent driving of the driver of the jeep bearing No.AP 03 D 1877, resulting injuries to the petitioner and awarded compensation of Rs.31,000/- along with interest at 9% p.a to the petitioner.

9. Aggrieved by the order of the Tribunal, the insurance company preferred the present appeal.

10. The learned counsel appearing for the appellant/ insurance company argued that that there was no coverage of policy issued to the jeep to the persons travelled in it on hire or reward and it was insured only for private use and domestic purpose of the insured and owner. Since the claimant travelled in the jeep by paying Rs.5/- to the driver, the owner of the vehicle thus contravened the conditions of the policy and therefore, the Tribunal erred in fixing the liability on the appellant/insurance company and the appellant is not liable to pay any compensation. In support of his contention, he placed reliance on a judgment of the Supreme Court in ***National Insurance Company Limited v. Balakrishnan and another***[1].

11. Notice to the respondents/claimant and owner of vehicle was served. There is no representation on their behalf.

12. Having regard to the submissions made by the learned counsel for the appellant, the only point which is to be decided in this appeal is as follows:

> ***Whether the appellant had made out any case to set aside the award of the Tribunal?***

13. **POINT:** A perusal of the evidence of PW1 coupled with Exs.A1 and A3 shows that the driver of the jeep was rash and negligent while driving the vehicle in which PW1 travelled as a passenger and received injuries. The Tribunal after considering the evidence of PW1 and Ex.sA1 and A3 held that the accident occurred due to the rash and negligent driving of the driver of the jeep bearing No.AP 03 D 1877 and awarded compensation of Rs.31,000/- payable by respondents 1 and 2.

14. The main contention of the appellant is that the insurance company is not liable to pay any compensation as Ex.B1 is an act policy and not a comprehensive policy and that the passengers travelling the jeep bearing No.AP 03 D 1877 are not covered under Ex.B-1 policy, since it is meant only for the personal use of the owner of the vehicle. It is further stated that PW1, who is claimant, in his cross-examination admitted that he paid Rs.5/- as fair to the jeep driver and the jeep carries passengers for hire.

15. On behalf of the appellant/2nd respondent, RW1 was examined who is working as Assistant Divisional Manager in the Insurance Company. He stated that insurance company issued policy under Ex.B1 to the 1st respondent covering the risk of jeep bearing No.AP 03 D 1877 and it is a private policy. As per the conditions of the policy, the vehicle has to be used for private purpose of the owner and it does not extend to the use of vehicle for hire or otherwise. Therefore, owner of the vehicle violated the terms and conditions of the policy and permitted passengers to travel on hire, as such the insurance company has no liability.

16. The admission of PW1 coupled with the evidence of RW1 clearly establishes that the claimant was travelling in the said vehicle as a fair paid passenger, where Ex.B-1 insurance policy

has no coverage. But the trial Court without considering this aspect passed the award against the insurance company fixing liability.

17. The Hon'ble Supreme Court in ***National Insurance Company Limited v. Balakrishnan and another***(1 supra) held that:

> "An Act Policy' stands on a different footing from a 'comprehensive/package policy'. As the Insurance Regulatory and Development Authority (IRDA) which is presently the statutory regulatory authority, has commanded the insurance companies that a 'comprehensive/package policy' covers the liability of the insurer for payment of compensation to the occupant in a motor vehicle, there cannot be any dispute in that regard. The earlier pronouncements were rendered in respect of an '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. IRDA has clarified the position by issuing Circulars dated 16.11.2009 and 3.12.2009. Therefore, a 'comprehensive/ package policy' would cover the liability of the insurer for payment of compensation for the occupant in a car".

18. In the present case, the vehicle insured under Ex.B1 policy by the 1st respondent is for a private purpose and it has to be used for personal and domestic purposes of the 1st respondent and it does not extend the use of the vehicle for hire or otherwise. Therefore, the 1st respondent contravened the terms and conditions of the policy, which is an act policy and it will not cover the risk of 3rd party. As such, the insurance company is not liable to pay any compensation to the claimant and the finding of the Tribunal holding the 2nd respondent liable is liable to be set aside by confirming the liability of the 1st respondent.

19. In the result, the Appeal is allowed setting aside the award of the Tribunal to the extent of exonerating the appellant/insurance company alone from liability. The insurance company is at liberty to

withdraw the amounts deposited in the Trial Court to the credit of O.P.No.444 of 2000 by filing an application. No order as to costs.

20. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J.

Date: 16.07.2015

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[1] 2013(1) Supreme Court Cases 731