IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

****

MACMA No.1309 of 2009

Between:

United India Insurance Company Ltd.

Rep. by its Divisional Manager, Ananthapur …. Appellant

And

Palla Vasundhara and others … Respondents

DATE OF JUDGMENT PRONOUNCED: **13.09.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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 Reporters / Journals? Yes / No

3. Whether Their Lordship wish to

   see the fair copy of the Judgment? Yes / No

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ M.A.C.M.A No.1309 of 2009

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United India Insurance Company Ltd.

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And

Palla Vasundhara and others … Respondents

! Counsel for Appellant : Sri Ravishankar Jandhyala

^ Counsel for Respondent Nos.1 to 3 : Sri M.Karibasaiah

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> Head Note:

? Cases referred:

2002 (8) Supreme 594 = 2003 ACJ 1 (SC)

[2] AIR 2004 SC 1340 = 2004 ACJ 428 (SC)

[3] (2005) 12 SCC 243

[4] AIR 2007 SC 1334

[5] AIR 2007 SC 1334

[6] III 2014 ACC 332 (Madras) = MANU/TN/1895/2014

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1309 of 2009

JUDGMENT:

The interesting point involved for consideration in this appeal is whether extra premium paid by an insured of a goods vehicle towards “non-fare paying passenger” (NFPP) will cover the risk of owner of the goods and his authorised representative alone or the passenger whether he being a gratuitous or fare paid?

2) On factual side, the deceased travelled in a lorry bearing KA 04 1011 which met with accident at railway gate when the driver was taking reverse it fell into rivulet and deceased died. The claimants who are the LRs. of the deceased claimed compensation against owner and insurer of the lorry pleading that deceased travelled in the capacity of owner of the onion load. The Insurance Company contested that the deceased was a midway gratuitous passenger and his risk was not covered under the policy.

3) On facts the Tribunal basing on the evidence on record held that deceased was not owner of the goods but travelled as a passenger. However, Tribunal basing on Ex.B1—policy observed that insured paid premium of Rs.50/- under NFPP which would cover the risk of deceased. For this purpose the Tribunal relied upon the decision of this Court reported in ***K.Arun Kumar v. Sri Ramdas Motor Transport Limited***. The Tribunal negatived the contention of Insurance company that the additional premium of Rs.50/- paid under the head NFPP as found in Ex.B1—policy was intended to cover the risk of owner of the goods or his authorised representative but not the deceased who travelled only as a passenger but not as owner of the goods or his authorised representative. In the result, the Tribunal awarded Rs.2,38,000/- with costs and interest at the rate of 7.5% p.a. from the date of OP till the date of realisation.

Hence, the appeal by the Insurance Company.

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

5) Heard arguments of Sri Ravishankar Jandhyala, learned counsel for appellant/Insurance Company and Sri M.Karibasaiah, learned counsel for Respondents 1 to 3/claimants and Respondents 4 to 6 were unserved.

6) Fulminating the award fastening liability on the Insurance Company, learned counsel for appellant/Insurance Company argued that additional premium of Rs.50/- paid under Ex.B1 under the head NFPP was meant to cover only the owner of the goods or his authorised representative who accompanied the goods but none other including the deceased who travelled only as a midway passenger even according to the finding of the Tribunal. He argued that the risk of a gratuitous or other passenger in a goods vehicle will not be covered under the policy which was repeatedly laid down by the Supreme Court in ***New India Assurance Co. Ltd. vs. Asha Rani; National Insurance Company Limited v. Baljit Kaur; National Insurance Company Limited v. Bommithi Subbayamma*** and ***New India Assurance Company Limited v. Vedwati*** etc. In view of the same, the Tribunal ought to have exonerated the Insurance Company from the liability and directed the insured to pay compensation.

7) Per contra, while supporting the award learned counsel for respondents 1 to 3/claimants argued that as per the decision reported in ***K.Arun Kumar***'s case (1 supra) which was relied upon by the Tribunal, the extra premium of Rs.50/- paid under NFPP squarely covers the passenger in a goods vehicle, as the risk of owner of the goods or his authorised representative was already taken care by the Act itself and the Tribunal rightly rejected the contention of the Insurance Company and the same cannot be agitated once again in the appeal. He thus prayed to dismiss the appeal.

8) In the light of above rival arguments, the point as framed supra arises for consideration.

9) **POINT**: On factual side, the Tribunal found the deceased was not owner of the goods which finding is not challenged by either side.

Admittedly, the crime vehicle was a lorry i.e. goods carrying vehicle. Ex.B1—policy was issued as goods carrying commercial vehicle and nature of policy is package policy. It was issued from 15.03.2002 to 15.03.2003. The accident in this case was occurred on 29.07.2002 indicating that policy was in force. A perusal of schedule of premium shows that apart from different headings the insured paid a premium of Rs.50/- under NFPP-I . It was contended by the Insurance Company before the Tribunal that the said premium was meant for owner of the goods or his authorised representative but not anybody else much less passenger in the goods vehicle. However, the Tribunal repelled this contention relying upon ***K.Arunkumar***'s case (1 supra). In that case the facts are that two claimants who travelled in a mini lorry sustained injuries when it dashed against another lorry. They claimed compensation against the owner and insurer of the mini lorry. The Insurance Company took the plea that both the claimants were passengers in goods vehicle and as such it was not liable to pay compensation. The Tribunal turned down the said plea on the observation that owner of the vehicle paid extra premium to cover the liability towards non-fare paying passengers which would cover the risk of claimants who travelled in the capacity of passengers. Aggrieved, the Insurance Company preferred appeals challenging its liability and of course, the claimants also preferred appeals questioning the adequacy of compensation. Before High Court relying upon several Apex Court judgments, learned counsel for appellant/Insurance Company contended that the liability of passenger in a goods vehicle is not covered under the terms of policy and hence the Tribunal was not correct in fastening liability upon insurer. It was alternatively argued even assuming that policy covers, it would cover non-fare paying passengers but not the fare paid passengers like the claimants. It was in that context, referring Section 147 of Motor Vehicles Act, 1988 (for short "MV Act") a learned Judge of this High Court held that the Act policy issued under Section 147 of MV Act will not cover the liability of a passenger in a goods vehicle which was held by the Apex Court in the series of judgments applies to the cases where the vehicle was covered with an Act policy without any extra premium. Learned Judge further observed that Section 147 of MV Act provides for the minimum extent of coverage of insurance, but it was not meant to exclude any coverage over and above what was provided in that Section if the parties to the contract of insurance intended to do so. The insurer and insured can certainly contract for a wider coverage than the one provided under Section 147 of MV Act by paying extra premium. While observing so and referring the case on hand, learned Judge further observed that owner paid extra premium of Rs.50/- towards non-fare paying passengers and since liability towards owner of the goods or his authorised representative travelling in the goods was already covered under Act policy itself, the extra premium was towards coverage for such categories of passengers such as claimants. In this process, the learned Judge negatived the alternative contention of Insurance Company that even if the policy covers, it covers the non-fare paying passenger but not fare paying passenger holding that when the policy covers a non-fare paying passenger, it would take within its fold the fare paying passenger also.

10) Relying on the above decision, the Tribunal fastened the liability on the appellant/Insurance Company. I find no error in appreciation of facts and law by the Tribunal. It must be noted that policy issued under Section 147 of MV Act is an Act policy with basic premium and intended to cover limited persons and to the limited extent. Under this policy goods carriage is concerned, it will cover the risk of a third party, owner of the goods or his authorised representative carried in the vehicle, driver and the cleaner who are the employees of the insured to the extent covered under Workmen's Compensation Act, 1923. No coverage is provided to the passenger in a goods carriage whether he be a paid passenger or non-fare paid passenger i.e. gratuitous one under Act policy. As observed by learned Judge in ***K.Arun Kumar***'s case (1 supra), in the series of cases i.e. ***Asha Rani*** and down below, when the Apex Court held that the risk of passenger in a goods vehicle was not covered, it should be understood in the context of an Act policy. The Act policy issued

under Section 147 of MV Act thus creates a basic statutory liability but it never prohibited the parties to widen the liability of Insurance Company in respect of certain uncovered persons by paying extra premium. Such a contractual liability created over and above the liability under Section 147 of MV Act is called 'legal liability'. NFPP is one such legal liability created by parties over and above the statutory liability. In this context, the argument of learned counsel for appellant/Insurance Company that NFPP covers only the owner of the goods or his authorised representative cannot be countenanced for the reason that their risk was already covered under Act policy. So, there is no gain saying that extra premium paid under NFPP is intended again to cover the owner of the goods or his authorised representative who are already covered under Act policy. So, extra payment under NFPP is meant for the passengers in a goods carriage whether he be a paid or gratuitous passenger. This was the principle laid down by the learned single Judge of this High Court in ***K.Arun Kumar***'s case (1 supra). Similar opinion was expressed by a learned Judge of High Court of Madras in ***Royal Sundaram Alliance Insurance Company Limited v. D.Gunasekaran*** with reference to IMT 37A. He observed thus:

> *"57. In the case of statutory liability, it is the policy and the intention of the legislature, by way of an Amendment to the Act, to cover persons mentioned in Section 147(1)(b)(i) of the Motor Vehicles Act, 1988, viz., any person, including the owner of the goods or his representative and whereas, in the case of legal liability, it is the intention and consensus of the inter se parties, i.e., the insurer and the insured. That is why, under IMT-37A, it is made clear that in consideration of the paying of an additional premium and notwithstanding anything to the contrary contained in Section II-1(c), it is hereby understood and agreed that the company will indemnify the insured against his legal liability other than liability under statute (except Fatal Accidents Act 1855), in respect of death or bodily injury to any person not being an employee of the insured and not carried for hire or reward, provided that, (a) the person is charterer or representative of the charterer of the truck; and (b) any other person directly connected with the journey in one form or the other being carried in or upon or*

entering or mounting or alighting from vehicle insured described in the schedule of this policy. At the end of IMT-37A, it is also stated that subject otherwise, to the terms, exceptions, conditions and limitations of the said policy. The usage of the above words, in the opinion of this Court, specifically includes the liability, which is covered under the statute."

11) In the light of above precedential law, it is clear that policy in the instant case covers the risk of deceased being a passenger in the vehicle and the Insurance Company cannot repudiate its liability.

12) In the result, this MACMA is dismissed by confirming the judgment of the Tribunal in O.P.No.No.610 of 2006. No costs in the appeal.

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

U.DURGA PRASAD RAO, J

Date: 13.10.2015

Murthy