

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

M.A.C.M.A. No. 1198 of 2009

Between:

National Insurance Company Limited rep. by
its Divisional Manager, Visakhapatnam.

....

Appellant

And

Chintapalli Ankayamma and
others

.... Respondents

DATE OF JUDGMENT PRONOUNCED: **12.08.2015**

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**

+ MACMA No.1198 of 2009

%12.08.2015

Between:

National Insurance Company Limited, rep. by
its Divisional manager, Visakhapatnam **.... Appellant**

AND

Chintapalli Ankayamma and others **....**
Respondents

! Counsel for Appellant : Smt. SAV Ratnam

^ Counsel for Respondents 1 to 3 : Sri T.Nageswara Rao

**Counsel for respondents 6 & 7 : Sri C.Appaiah
Sharma**

< Gist:

> Head Note:

? Cases referred:

- 1) 2008 ACJ 721 (SC)
- 2) 2003 ACJ 1 (SC)

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD

RAO

M.A.C.M.A.No.1198 of 2009

JUDGMENT:

Aggrieved by the Award dated 10.10.2008 in M.V.O.P.No.450 of 2005 passed by the Chairman, MACT-cum-District Judge, Vizianagaram (for short “the Tribunal”), the 2nd respondent in the OP preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that on 04.09.2004 when the deceased—Appala Naidu boarded van bearing No.AP 31 W 9210 at 12 noon at Kosta village junction to go to Golgam village and when it reached near Poosapatirega village at about 1.45 PM, the van driver drove the same in a rash and negligent manner and at high speed and dashed against the opposite coming RTC bus bearing No.AP 11Z 962 and thereby, the deceased received bleeding injuries all over the body. Immediately he was shifted to Government Hospital, Vizianagaram where he succumbed to injuries on the same day at about 8.20 PM. It is averred that the accident was occurred due to the fault of drivers of both the vehicles. On these pleas, the claimants filed M.V.O.P.No.450 of 2005 under

Section 166 of Motor Vehicles Act (for short “MV Act”) and claimed Rs.4,00,000/- as compensation against respondents 1 and 2, who are the owner and insurer of van and respondents 3 to 5—driver and APSRTC.

b) R3/driver of RTC bus remained ex-parte.

c) R1/owner-cum-driver of the van filed counter denying all the material allegations made in the claim petition and urged to put the claimants to strict proof of the same. He submitted that there is no fault on his part and he was driving the van on the extreme left side of the road and bus driver suddenly turned the bus to the right side without blowing horn and caused the accident. He also submitted that as the vehicle in question was insured with R2/Insurance Company, it is liable to pay the compensation.

d) R2/Insurance Company filed counter and opposed the claim denying all the material averments made in the petition. R2 disowned its liability on the ground that driver of the van was not having valid and effective driving licence on the date of accident and that the vehicle was used violating the terms of policy and compensation claimed was highly excessive and exorbitant and thus prayed to dismiss the O.P.

e) R5—APSRTC filed its counter contending that driver of the bus was not at fault and van driver drove the vehicle in a rash and negligent manner and at high speed and without following traffic rules came and hit the stationed bus on the

front portion and caused the accident and hence van driver was at fault.

f) R4 filed a memo adopting the counter of R5.

g) During trial, PWs.1 and 2 were examined and Exs.A1 to A5 were marked on behalf of claimants. RWs.1 and 2 were examined and Exs.B1 to B4 were marked on behalf of respondents.

h) The Tribunal considering the oral and documentary evidence held that driver of the offending van was responsible for the accident. Compensation is concerned, the Tribunal awarded Rs.82,000/- with proportionate costs and interest at 9% p.a. against R1 and R2, who are the owner and insurer of offending van and dismissed the claim against respondents 3 to 5, as below:

Loss of dependency	Rs.	80,000-00
Funeral expenses	Rs.	2,000-00

Total:	Rs.	82,000-00

Hence, the appeal by Insurance Company.

3) The parties in this appeal are referred as they stood before the Tribunal.

4) Heard arguments of Smt. SAV Ratnam, learned counsel for appellant/Insurance Company; Sri Taddi Nageswara Rao, learned counsel for respondents 1 to 3/claimants and Sri C.Appaiah Sharma, learned counsel for R6 and R7/APSRTC.

Notice sent to R4/owner of the van was served but no representation hence, treated as heard. R5/driver of RTC bus was not necessary party as per cause title.

5) Fulminating the award fixing liability on the Insurance Company, learned counsel for appellant/Insurance Company vehemently argued that in this case the first respondent who is the owner-cum-driver of the van, has committed two severe violations of terms of policy inasmuch as he himself drove the van without having a valid and effective driving licence and further, he allowed the deceased to travel in the van which is a goods carriage vehicle as a gratuitous passenger therein and in view of gross infraction of terms of policy, the Tribunal ought to have exonerated the Insurance Company from its liability. However, the Tribunal committed grave mistake in appreciation of facts and law.

a) The first violation touching the driving licence issue is concerned, the Tribunal misread the judgment of the Honourable Apex Court in ***National Insurance Company Limited v. Annappa Irappa Nesaria***^[1] and held as if the first respondent had valid driving licence to drive the van in question. She argued that the vehicle in question is a goods carriage vehicle which is a transport vehicle, whereas R1 had licence to drive only Light Motor Vehicle (non-transport) driving licence during the relevant period and he was not authorized to drive the transport vehicle like the crime vehicle.

b) The second violation i.e. allowing the deceased to travel

in the goods vehicle as a gratuitous/unauthorized passenger is concerned, learned counsel argued the Tribunal has not at all answered this issue and ultimately held that Insurance Company is liable. She thus prayed to allow the appeal and exonerate the Insurance Company from its liability.

6) Per contra, learned counsel for respondents 1 to 3/claimants supported the award and prayed for dismissal of appeal.

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

“Whether the Tribunal erred in fastening liability on the appellant/Insurance Company?”

8a) **POINT:** On a careful perusal of oral and documentary evidence on record, I find justification in the argument of learned counsel for appellant/Insurance Company. The contention of Insurance Company as can be seen from its counter and evidence of RW1 is two fold. Firstly that R1 who is the owner-cum-driver of the vehicle had no valid and effective driving licence to drive the crime van which is a goods carriage vehicle and secondly that he allowed the deceased to travel in the goods vehicle as an unauthorised/gratuitous passenger in violation of terms of the policy.

b) Be that it may, a perusal of the award shows that the Tribunal basing on the judgment of the Apex Court in **Annappa Irappa Nesaria's** case (1 supra) opined that the

driver who had a valid licence to drive Light Motor Vehicle is authorized to drive goods vehicle as well therefore, R1 had valid and effective driving licence at the relevant time. I am constrained to say this finding is incorrect on the face of the facts and law. Ex.B2—RC extract of crime van bearing No.AP 31 W 9210 shows that it is a goods carriage *Medium Motor Vehicle* since its gross weight is 8,800 Kgs. Ex.B3—permit of the vehicle also reveals the same facts. Then Ex.B4—driving licence extract of R1 viz. P.Satyanarayana shows he was authorized to drive the following vehicles:

LMV	Non-Transport	01.10.2003
MCWG	Non-Transport	
01.10.2003		
LMV	Transport	
21.02.2005		

So, as on the date of accident he was holding driving licence to drive LMV of non-transport type whereas the vehicle in question is a Medium Motor Vehicle and it was a goods carrying vehicle i.e. transport vehicle. It is, in this context, useful to refer SO 1248(E) dated 05.11.2004 whereunder the Central Government classified the transport and non-transport vehicles as per which, goods carrier trucks, tankers, mail carriers (N1—N3 category) are regarded as transport vehicles. So, the evidence on record clearly depicts that the vehicle is a Medium Motor Vehicle and a transport vehicle, whereas the driver had driving licence to drive a Light Motor Vehicle of non-transport type. Hence, he had no effective driving licence to drive the type of vehicle involved in the accident.

c) Coming to the judgment of Apex Court in **Annappa**

Irappa Nesaria's case (1 supra) what was observed by the Apex Court in that decision is that a "Light Motor Vehicle" takes within its umbrage, both a transport vehicle and a non-transport vehicle. It further observed that a driver who had valid driving licence to drive a Light Motor Vehicle, therefore, was authorized to drive a light goods vehicle as well. Thus, the observation of Honourable Apex Court is that a Light Motor Vehicle includes both a transport and a non-transport vehicle. There is no demur in it. In that case, it appears, the driving licence of the concerned driver only revealed as Light Motor Vehicle without further confining the said driving licence to either transport or non-transport type of vehicles. Since a Light Motor Vehicle includes both transport and non-transport type vehicles, it was held he was having valid driving licence in that case. However, in the instant case the facts are different. R1—driver authorized to drive Light Motor Vehicle but his licence is confined to non-transport type of vehicles only. So, at the first instance, he cannot take advantage from the above judgment of Apex Court. Further, the vehicle involved in this case is a *Medium Motor Vehicle* but not a *Light Motor Vehicle*. On that ground also it must be said that R1 was not holding effective driving licence. So, in any view of the matter, the Tribunal was not right in holding that R1 had valid driving licence.

d) Then, coming to second violation admittedly, the vehicle in question is a goods carriage vehicle and the deceased

boarded on it as a midway unauthorized passenger. A perusal of Ex.B1—policy shows that no premium was paid by R1 to give coverage to gratuitous/unauthorized passengers in the goods carriage vehicle. Under Section 147 of MV Act the risk of unauthorized/gratuitous passengers need not be covered unless extra premium is paid. The Apex Court clarified this fact in the case of ***New India Assurance Co. Ltd. v. Asha Rani***^[2] which was followed in subsequent decisions also. By this fact also the Insurance Company cannot be fastened with liability. Unfortunately, the Tribunal has not addressed this issue. So, I find considerable force in the contention of learned counsel for appellant/Insurance Company.

9) In the result:

- a) This MACMA filed by the Insurance Company is allowed and the appellant/Insurance Company is exempted from its liability and it is directed that the first respondent/insured shall pay the compensation to the claimants as awarded by the Tribunal.
- b) If, pending appeal, the Insurance Company paid any compensation, it shall recover the same from the first respondent/insured.
- c) No costs in the appeal.

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

U.DURGA PRASAD RAO, J

Date: 12.08.2015

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[\[1\]](#) 2008 ACJ 721 (SC)

[\[2\]](#) 2003 ACJ 1 (SC) = MANU/SC/7093/2008