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.841 of 2009

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Between:

The New India Assurance Company Limited,
Rep. by its Branch Manager, Branch Office,
Sanghamithra Bank Complex, Prakasam Bazar,
Nalgonda Town and District

.. Appellant/ Respondent No.2

And

Kampati Veeramma & another

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 17-07-2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local newspapers Yes/No
   may be allowed to see the Judgment?

2. Whether the copies of judgment may be Yes/No
   marked to Law Reporters/Journals

3. Whether Their Lordship wish to
   see the fair copy of the Judgment? Yes/No

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

M.A.C.M.A. No.841 of 2009

JUDGMENT:

Challenging the award dated 10.11.2008 in O.P. No.219 of 2005 passed by the Chairman, MACT-cum-II Additional District

Judge, Nalgonda at Suryapet (for short 'the Tribunal'), the 2nd respondent—Insurance Company preferred the instant MACMA.

2). The factual matrix of the case is thus:

a) On 13.02.2015, the claimant—Kampati Veeramma and some others attended a marriage at Nadigudem and returned back in a tractor and tailor bearing Nos.AP 24 U 2401 and 2402 from Nadigudem to Madhavaram. On the way, when it reached Madhavaram Village the driver of the tractor and trailor drove the vehicle in a rash and negligent manner and at high speed and lost control over the steering, thereby tractor and trailor turned turtle and inmates of tractor and trailor including the claimant sustained severe injuries. Pleading that the accident was occurred due to fault of the tractor driver, they filed O.P. No.219 of 2005 against respondents 1 and 2 against the owner and insurer of the offending vehicle under Section 166 of M.v. Act and claimed Rs.50,000/- as compensation.

b) The 1st respondent filed counter and opposed the claim denying all the material averments. He contended that he insured his vehicle with respondent No.2 and so respondent No.2 has to indemnify his liability. The 2nd respondent—Insurance Company filed counter and opposed the claim mainly on the contention that the petitioner and others were gratuitous passengers in a goods vehicle and therefore their liability was not covered under the terms of policy. On this ground, respondent No.2 repudiated its liability.

c) During trial P.W.1 was examined and Exs.A.1 to A.6 were marked on behalf of claimants. RW.1 was examined and Exs.B1 and B2 were marked on behalf of respondents.

d) On appreciation of oral and documentary evidence, the Tribunal awarded a sum of Rs.16,200/- as compensation with costs and interest at 7.5% per annum.

d) Liability is concerned, the Tribunal held that the Insurance Company has to pay and recover the compensation.

Hence the appeal by the Insurance Company.

3) Heard arguments of Sri B.Devanand, learned counsel for appellant. Though notice was served on respondents but there was no appearance on their behalf and hence treated as heard.

4) While opposing the award in so far as directing the Insurance Company to pay and recover from the insured, learned counsel for appellant vehemently argued that the petitioner and others travelled in the goods vehicle as gratuitous passengers and therefore, Ex.B1—policy do not cover their risk since no premium was paid to cover their risk and as such the Tribunal ought to have totally exonerated the Insurance Company from liability but it erroneously directed the Insurance Company to pay and recover the compensation from the insured. He cited number of citations in support of his contention that in a situation of this nature, Insurance Company attains no liability.

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

"Whether the Tribunal is right in directing the appellant/ Insurance Company to pay and recover compensation from insured?"

6). **POINT**: The accident, involvement of tractor and trailor bearing Nos.AP 24 U 2401 and 2402 and claimant traveling in tractor and trailor along with others as gratuitous passengers and sustaining injuries are all admitted facts.

7) Having regard to this factual background, I find force in the argument of learned counsel for appellant.

A perusal of Ex.B1—policy shows that it is a package policy given to the tractor and trailor. Nothing is depicted therein that it covers the risk of the gratuitous passengers. The Apex Court in a number of decisions has laid down that the risk of the gratuitous passengers in a goods vehicle will not be covered. Hence, the Insurance Company will not attain any liability. This aspect was reiterated in the following cases. 1) ***New India Assurance Company Limited vs Asha Rani and others***[1] 2) ***National Insurance Company Limited vs Baljith Kaur and others***[2] ***3)Oriental Insurance Company Limited vs Devireddy Konda Reddy***[3] ***4)National Insurance Company Limited vs Prema Devi***[4] ***and 5) National Insurance Company Limited vs. Bommithi Subbhayamma.***

8) In view of catena of decisions showing that Insurance Company will not attain any liability in respect of gratuitous passengers in goods vehicle, the direction of the Tribunal to the appellant—Insurance Company to pay and recover compensation cannot be countenanced.

9) In the result, the appeal is allowed and ordered as follows:

a) Appellant—Insurance Company is exonerated from liability and owner of tractor and trailor (1st respondent in O.P) is directed to pay the compensation awarded by the Tribunal.

b) No order as to costs in this appeal.

As a squeal, miscellaneous petitions, if any, pending in this appeal shall stand closed.

U. DURGA PRASAD RAO, J

Date:17.07.2015

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HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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Date:17.07.2015

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[1] 2003 ACJ (1) SC

[2] 2004 ACJ (428) SC

[3] 2003 ACJ 468 SC

[4] 2008 ACJ 1149 SC