THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A.No.560 of 2005

JUDGMENT:

This appeal is preferred by the second respondent in O.P.No.277 of 2002 on the file of the Motor Accident Claims Tribunal – cum – III Additional District Judge, Tirupati.

The above petition was filed by the dependants of the deceased, who died in a motor accident that occurred on 18.03.2000 when the van bearing No.TN 07 6480 in which he was travelling, reached the ghat road, the driver of the said van drove it in a rash and negligent manner and lost control over the said van, as a result of which it dashed against a road side wall and fell down into a valley which is about 20 feet depth. The deceased initially sustained injuries and when he was taking treatment, he died on 22.03.2000. The Tribunal, on evidence, held that the accident occurred due to rash and negligent driving of the driver of tempo van bearing No.TN 07 6480. The Tribunal framed the following issues:

> "1. Whether the pleaded accident occurred resulting in the death of deceased and if so was it due to the fault of the driver of the tempo bearing No.TN 07 7480?
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> 2. Whether the tempo in question belongs to R-1 and stood insured with R-2/insurance company by the date of accident and whether policy covers the risk of the deceased?
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> 3. Whether the petitioners are L.Rs of deceased and entitled to compensation and if so to what amount, from which of the respondents?
>
> 4. To what relief?"

With regard to the second issue, the appellant herein examined R.W.1

and an argument was advanced on the basis of the oral evidence read with Ex.B1 – Policy, that the deceased was a Head Constable working at Tirumala and he was not entitled to travel in the said vehicle, and even if he was entitled to travel in the said vehicle, since the policy was only an act policy, the claim for his death is not covered. The Tribunal, by relying on **National Insurance Company Limited v. Baljit Kaur** held that the owner as well as the Insurance Company are jointly and severally liable to pay the compensation. Accordingly, the Tribunal awarded an amount of Rs.5,00,000/- with interest at 9% per annum from the date of the petition till the date of realization. The present appeal is filed not challenging the quantum of compensation, but challenging the liability imposed on the appellant – Insurance Company.

Learned Counsel for the appellant contended that Ex.B1 – Policy, is only an act policy which covers the risk of third parties but not the inmates of the vehicle. There is no statutory obligation on the part of the Insurance Company to issue a policy covering the risk of persons travelling in the vehicle, except on the request of the owner, who should pay extra premium. In the instant case, in the absence of payment of such extra premium, the appellant is not liable to pay the said amount. Learned Counsel for the respondents does not dispute the said proposition.

This Court perused Ex.B1 – Policy, which is an act policy. With regard to the liability of the Insurance Company, the Supreme Court in **National Insurance Company Limited v. Balakrishnan**, held as follows:

> "In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "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. These aspects were not noticed in **Bhagyalakshmi v. United Insurance Co. Ltd.,** ((2009) 7 SCC 148) and, therefore, the matter was

> referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."

In view of the authoritative pronouncements of the Supreme Court and in the light of Ex.B1, being an act policy, the deceased, being an inmate of the vehicle, the claim for his death is not covered and no amount need be paid by the Insurance Company.

In the circumstances, the appeal has to be allowed.

The appellant deposited 50% of the decretal amount and costs by virtue of an order passed by this Court on 18.03.2005 while admitting the appeal and the said amount was withdrawn pursuant to a subsequent order dated 26.04.2005. This Court does not want to disturb the order, but gives liberty to the appellant to recover the said amount from the fifth respondent herein. It is also made clear that respondent Nos.1 to 4 herein can recover the balance amount from the fifth respondent herein.

The appeal is, accordingly, allowed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

24.11.2015

vs

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