THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.73 OF 2013

JUDGMENT:

1 Assailing the judgment and award dated 01.08.2012 passed in O.P.No.276 of 2008 on the file of Chairman, Motor Vehicles Accidents Tribunal – cum – II Additional District Judge, Karimnagar at Jagtial, wherein and whereby the Tribunal allowed the claim petition filed by the petitioners seeking compensation of Rs.6.00 lakhs, in toto, the insurer of the vehicle filed the present appeal under section 173 of the Motor Vehicles Act.

2 The parties to this appeal will hereinafter be referred to as they are arrayed in the O.P. for the sake of convenience.

3 The factual matrix germane to filing of the present appeal is, succinctly, as follows:

4 On 14.12.2007, one Budiki Gangadhar along with his family members was proceeding to Tirupati from his native place Hanumanwada by engaging TATA Indica Car bearing No.AP 24 G 1233 belongs to the 2nd respondent. When the car reached Sankhapuram Yanadi colony of Rajampet, the driver of the car had driven the same in a rash and negligent manner and dashed against a tractor coming in opposite direction. Due to the accident, Gangadhar (hereinafter referred to as 'the deceased') died on the spot and some of the inmates of the car sustained

injuries. In connection with the said accident, the Station House Officer, Mannur police station registered a case in Cr.No.12 of 2007 under Sections 337 and 304-A of IPC against the first respondent who was the driver of the car. By the time of accident, the deceased was aged about 50 years and used to earn Rs.10,000/- p.m. First petitioner is wife, petitioner Nos.2 and 3 are children and petitioner No.4 is mother of the deceased and they are all dependents on the income of the deceased. The TATA Indica Car bearing No.AP 24 G 1233, which belongs to the second respondent was insured with the third respondent with effect from 22.11.2006 to 21.11.2007. Therefore, the respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioners. Hence the petition.

5 Respondent Nos.1 and 2 remained ex *parte*. Third respondent filed counter and additional counter denying all the averments made in the petition including manner of accident, age and income of the deceased. The accident occurred due to collision between the TATA Indica Car bearing No.AP 24 G 1233 and a Tractor bearing No. AP 21 U 3617 and hence the present petition is not maintainable for non-impleading of the driver, owner and insurer of the tractor. This respondent is not liable to pay compensation unless the petitioners establish that the driver of the car was having valid and effective driving

licence to drive the vehicle as on the date of accident. The terms and conditions of the policy do not cover the risk of the inmates of the car as the second respondent has not paid extra premium. Therefore, the petition may be dismissed.

6 Basing on the above pleadings, the Tribunal framed the following issues for trial:

> *a. Whether the accident occurred due to rash and negligent driving of the driver of the TATA Indica Car bearing No.AP 24 G 1233 by its driver?*
>
> *b. Whether the petitioners are entitled to claim compensation, if so, to what amount and from whom?*
>
> *c. To what relief?*

7 During the course of trial, on behalf of the petitioners P.Ws.1 and 2 were examined and Exs.A.1 to A.13 were marked. On behalf of the respondents R.W.1 was examined and Exs.B.1 to B.6 were marked.

8 On appreciating the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the TATA Indica Car bearing No.AP 24 G 1233, which resulted in the death of the deceased and allowed the petition by awarding compensation of Rs.6.00 lakhs as claimed by the petitioners and by fastening the liability on the third respondent – insurer also. Feeling aggrieved by the judgment and award of the Tribunal, the third respondent

– insurer preferred the present appeal.

9 The learned counsel for the appellant – third respondent contended that the Tribunal has not considered the recitals of Exs.B.1 to B.6 in right perspective and allowed the petition on assumptions and presumptions. She further submitted that the Tribunal misconstrued the provisions of the M.V.Act and also the terms and conditions of Ex.B.1 - Insurance Policy. She further submitted that Ex.B.1 does not cover the risk of inmates of the car and hence the judgment and award of the Tribunal is not sustainable either on facts or in law.

10 *Per* contra, the learned counsel for the petitioners – claimants submitted that the third respondent having issued Ex.B.1 policy, is under an obligation to indemnify the liability of the second respondent. He further submitted that the Tribunal has considered the scope of Ex.B.1 Insurance Policy and rightly fastened the liability on the third respondent. He further submitted that there are no grounds much less valid grounds to upset the findings arrived at by the Tribunal.

11 Basing on the rival contentions, the points that emerge for consideration in this appeal are:

> *“1) Whether the accident occurred due to the rash and negligent driving of the first respondent?*
>
> *2) Whether the Tribunal erred in fastening the liability on the third respondent?”*
>
> *3) Whether the compensation awarded by the*

Tribunal is just and reasonable?

Point No.1:

12 Basing on the oral testimony of P.W.1 coupled with Exs.A.1 to A.5, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the TATA Indica Car bearing No.AP 24 G 1233, which resulted in the death of the deceased. The finding of the Tribunal is fully supported by oral and documentary evidence available on record. Moreover, neither the first respondent nor the second respondent has filed any appeal challenging the finding of the Tribunal on issue No.1. The third respondent is also not seriously disputing the manner of accident and factum of death of the deceased in the motor vehicle accident. I am fully agreeing with the finding recorded by the Tribunal on issue No.1.

Point No.2:

13 The oral testimony of R.W.1 coupled with the terms and conditions of Ex.B.1 Insurance Policy clearly reveals that the TATA Indica Car bearing No.AP 24 G 1233 which belongs to the second respondent was insured with the third respondent with effect from 22.11.2006 to 21.11.2007. Therefore, I have no hesitation to hold that Ex.B.1 Insurance Policy was in force as on the date of accident i.e. 14.02.2007.

14 As per the testimony of R.W.1, Ex.B.1 policy does not

cover the risk of inmates of the car. A perusal of Ex.B.1 clearly reveals that the second respondent paid basic premium of Rs.673/- covering the risk of third party. The second respondent has not paid extra premium covering the risk of the inmates of the car. There is no dispute between the parties with regard to the nature of Ex.B.1 policy, which is an Act policy. Basing on the facts pleaded and proved, this Court can safely arrive at a conclusion that the third respondent issued an Act policy in respect of the TATA Indica Car bearing No.AP 24 G 1233 which belongs to the second respondent.

15 The crucial question that falls for consideration is whether there is any contractual or statutory obligation on the part of the third respondent to indemnify the liability of the second respondent in case of bodily injury or death of inmates of the car?

16 The predominant contention of the learned counsel for the third respondent is that the there is no contractual or statutory obligation on the part of the third respondent to indemnify the liability of the second respondent since Ex.B.1 is an Act policy. To substantiate the argument, she has drawn my attention to the following decisions.

United India Insurance Co. Ltd. Vs. Kondakotla Saroja and Others[1] wherein this Court held as under:

> 20. The decisions upon which reliance is laid by the learned Counsel for the respondents - claimants are contrary to the ratio laid down by the Supreme Court and, therefore, the same cannot be taken into consideration to fix the liability on the Insurance Company. Further,

the Supreme Court in **Oriental Insurance Co. Ltd. Vs. Meena Variyal** {(2007 (5) SCC 428} after interpreting Section 147 of the Act accepted the ratio laid down in **Pushpabai Purshottam Udeshi's and others Vs. M/s. Ranjit Ginning and Pressing Co. (P) Ltd and Another** {(AIR) 1977 SC 1735}. Once the Insurance Company under Ex.A-5 cover note has not undertaken the liability by collecting extra premium for the passengers who travelled in the insured vehicle, it cannot be held liable to pay the compensation and it is only the respondent - owner of the vehicle who is liable to satisfy the decree and pay the compensation amount. In view of the same, the C.M.A is allowed and the judgment and decree passed by the lower Court that the Insurance Company is jointly and severally liable to pay the compensation is set aside. The Insurance Company is at liberty to recover the amount deposited by it from the owner of the vehicle.

National Insurance Company Limited Vs. Balakrishnan and Another[2] wherein the Hon'ble Apex Court held as under:

26. 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 the 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 the case of ***Bhagyalakshmi*** **Vs. 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 the 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.

17 As per the principle enunciated in the cases cited supra, there is no statutory or contractual obligation on the part of the insurance company to indemnify the liability of the insured in case of bodily injury or death of the pillion rider of the scooter or inmates of the car unless the owner of the vehicle pays extra premium covering the risk of the pillion rider or inmates of the car. As observed earlier, the second respondent has not paid extra premium covering

the risk of inmates of the car, thereby to create a contractual obligation on the part of the third respondent to indemnify the liability of the second respondent in the event of the vehicle involving in any accident.

18 The Tribunal mulcted the liability on the third respondent on two grounds viz., 1) the inmates of the car will fall within the definition of third party; and 2) by the time of accident, the deceased and his family members have not hired the car or not travelling in the car as gratuitous passengers. The vehicle in question is not a goods vehicle so as to decide whether the deceased was travelling as a gratuitous passenger or not. Whether the deceased and his family members have engaged the car on hire or not is immaterial in view of the terms and conditions of Ex.B.1, which is an Act Policy.

19 The finding of the Tribunal that the inmates of the car will fall within the definition of third party is not legally sustainable in view of the principle laid down in **Balakrishnan** case (2 supra).

20 The principle enunciated in the cases cited supra is squarely applicable to the facts of the case on hand. Taking into consideration the terms and conditions of the policy and also the principle enunciated in the cases cited supra, there is no contractual or statutory obligation on the part of the third respondent to indemnify the liability of the second respondent. Therefore, the finding of the Tribunal

that the third respondent has to indemnify the liability of the second respondent is not legally sustainable and hence the said finding of the Tribunal is hereby set aside. There are sufficient grounds more so valid grounds to interfere with the finding of the Tribunal in this appeal. The point is answered accordingly.

<u>Point No.3:</u>

21 The Tribunal allowed the petition by awarding compensation of Rs.6.00 lakhs. Though a ground was raised in the grounds of appeal, but none of the respondents have urged before the Court with regard to the quantum of compensation. Hence this Court has no option except to sail with the findings of the Tribunal on the quantum of compensation.

22 In the light of the foregoing discussion, the appeal is allowed setting aside the judgment and award passed by the Tribunal in O.P.No.276 of 2008 to the extent of fastening the liability on the third respondent and consequently the petition against the third respondent is dismissed. Therefore, the respondent Nos.1 and 2 alone are liable to pay compensation to the petitioners. It is made clear that if the petitioners have already withdrawn amount deposited by the third respondent, the third respondent is at liberty to recover the same from the second respondent by following the due procedure. No order as to costs. As a sequel, miscellaneous petitions if

any pending in this Civil Miscellaneous Appeal shall stand closed.

____

T. SUNIL CHOWDARY, J.

Date: 11-09-2015

Kvsn

---

[1] 2008 (5) ALD 288 (D.B)

[2] (2013) 1 SCC 731