HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.613 of 2009

JUDGMENT:

Challenging the Award dt:31.03.2005 passed in MVOP No.120 of 2002 by the Motor Accidents Claims Tribunal-cum-III Additional District Judge (FTC), Bhimavaram (for short "the Tribunal") the Oriental Insurance Company/4th respondent in O.P preferred the instant MACMA.

2) The factual matrix of the case is thus:

a) On 11-05-2001 at about 3.00pm, the deceased-Divala Nageswara Rao along with other persons went to attend earthen work in the Tractor and trailer bearing Nos.AP 37 T 7943 and 5105 respectively and when it reached near the land of Yella Gunnaiah near Allicheruvukunta turning, the driver of the tractor drove the vehicle in a rash and negligent manner without observing pits and mounds and thereby the deceased, who sat on the right side in the trailer, fell down and received injuries. Thereafter, he was shifted to G.R.K. Hospital, where he succumbed to injuries. It is averred that the driver of tractor and trailer was responsible for the accident and due to abrupt death of the deceased, the claimants became destitutes. On these pleas, the claimants who are wife, daughters and parents of the deceased, filed M.V.O.P. No.120 of 2002 under Section 166 of Motor Vehicles Act, 1988 (for short "M.V.Act") against respondents 1 to 4 who are the driver, owner of tractor, owner of trailer and insurer of the offending vehicle respectively and claimed Rs.3,50,000/- as compensation.

b) Respondent No.2 filed counter, which is adopted by R.1 and R.3, denying all the material averments made in the petition and urged to put the claimants in strict proof of the same. He further contended that as the offending vehicle was insured with R.4—Insurance Company, the liability of R.2 and R.3, if any has to be indemnified by R.4. It is averred that R.1 had valid driving license at the time of accident. It is also contended that claim is highly excessive and exorbitant.

c) Respondent No.4 filed counter denying all the material averments made in the petition and urged to put the claimants in strict proof of the same. It contended that as per terms of the Policy, it covers the risk of driver of the tractor only. As per the terms of Trailer policy, the risk of the coolies is not covered. R4 contended that claim of the claimants is highly excessive and exorbitant and thus prayed to dismiss the OP.

d) During the trial, PWs.1 and 2 were examined and Exs. A.1 to A.4 were marked on behalf of claimants. RW.1 was examined and Exs. B.1 to B.4 were marked on behalf of respondents.

e) The Tribunal on appreciation of both oral and documentary evidence awarded a total sum of Rs.2,41,500/- with proportionate costs and interest at 9% p.a against respondents.

Hence the appeal by Insurance Company.

3) Heard arguments of Sri Kota Subba Rao, learned counsel for appellant/ Insurance Company and Sri K.L.N.Swamy, learned counsel for respondent Nos.1 to 3 and 5/claimants. R.4 died.

4 a) Learned counsel for appellant/Insurance Company challenged the award firstly on the ground that though tractor and trailer were insured, trailer had no coverage for the workman/coolie and as the deceased travelled in the trailer and fell down and died, his risk at the outset is not covered. He further argued that the policy of tractor no doubt covers the risk of paid driver/workman and even if the said policy is extended to the trailer also, still it will not cover the risk of deceased because he travelled in the vehicle as an unauthorized passenger but not as a coolie. Thus he argued that the Insurance Company will not attain any liability.

b) Secondly and alternatively he argued that even assuming that the policy covers the risk of deceased as a workman, since the policy is an Act only policy, the liability of Insurance Company is restricted to the extent payable under Workmens Compensation Act only but not under M.V.Act. Thus he argued that the Tribunal erred in fastening the liability on Insurance Company to the extent payable under M.V.Act. Learned counsel thus at the first instance prayed to exonerate the Insurance Company from the liability and alternatively restrict its liability to the extent payable under Workmens Compensation Act. He relied upon the decision reported in ***National Insurance***

Company vs. Prembai Patel and others[1].

5) Per contra learned counsel for respondents 1 to 3 and 5/claimants while supporting the award argued that under Section 167 of M.V.Act, claimants are entitled to file claim application either under M.V.Act or under Workmens Compensation Act and since the claimants have chosen the claims tribunal constituted under M.V.Act, compensation as determined under M.V.Act shall be payable by the Insurance Company and it cannot contend that its liability is restricted to the extent payable under Workmens Compensation Act only. Learned counsel further argued that such a plea was not taken by the Insurance Company before the Lower Tribunal and hence it cannot raise the said plea now. He thus prayed to dismiss the appeal.

6) Though respondent nos.7 and 8/owners of the tractor and trailer are represented by their counsel, no arguments were addressed on their behalf.

7) As a reply, learned counsel for appellant/Insurance Company argued that the liability of Insurance Company depends upon the terms entered into by the parties under the insurance policy but not as per the forum chosen by the claimants and therefore, it is not apt to argue that since the claimants have chosen the motor accidents claims tribunal, the Insurance Company is liable to pay compensation as determined under M.V.Act. He further argued that the Insurance

Company has taken specific plea about non-coverage of the risk of the workmen in its counter.

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

"Whether the award of the Tribunal fastening liability on the Insurance Company is factually and legally sustainable?"

9) **POINT**: The accident, involvement of the Tractor bearing No.AP 37 T 7943 and Trailer bearing No.AP 37 T 5105 and death of deceased are admitted facts. It is also an admitted fact that R.2 and R.3 are the son and father respectively and they are owners of crime vehicle i.e, tractor and trailer and they are covered with insurance policy under Exs.B.1 and B.2. It is in this backdrop, the first contention of Insurance Company is that since the deceased fell down from the trailer and died and as Ex.B.2—policy of the trailer does not cover the risk of workman, it is not liable to pay compensation.

10) In this context, a perusal of Exs.B.1 and B.2—policy copies would show that Ex.B.1—policy relates to the tractor and Ex.B.2—policy relates to the trailer. Ex.B.1 was issued in favour of R.2 and it is an Act only policy. Under Ex.B.1, apart from the risk of third party, the risk of paid driver/one workman is also covered. Whereas Ex.B.2—policy relates to trailer and it is also an Act only policy which was issued in favour of R.3. It covers the risk of third party only. So I find force in the contention of learned counsel for appellant/Insurance Company that Ex.B.2—policy of

trailer does not cover the risk of workman/coolie. In the normal course, the Insurance Company should have been exonerated for the reason that the deceased travelled in the trailer and died and his risk as a workman/coolie was not covered under Ex.B.2—policy. However, that is not the end of the matter and there is another legal angle involved in this case which prompts me to fasten the liability on the Insurance Company also.

11) The factual scenario as depicted by Ex.A.1—FIR and Ex.A.4—charge sheet which ofcourse not denied by either party, would show that the deceased met with accident, suffered injuries and died only after he fell down from the trailer due to rash and negligent driving by the driver of the tractor. In such an event, it must be said that the deceased received injury as a third party but not as inmate of the vehicle. It was so held by this Court in a decision reported in ***United India Insurance Company Limited rep. by its Branch Manager vs. Kurva Yejju Mallamma and others***[2]. In that case, when the deceased was getting down from the lorry, the driver suddenly moved the same in a rash and negligent manner and thereby the deceased fell down, suffered severe injuries and succumbed to death on the spot. In the resultant claim petition, the Insurance Company sought to repudiate its liability on the contention that the deceased being a gratuitous passenger, policy would not cover his liability. In that context, a learned single Judge of this Court following the decisions reported in

1) ***A. Subramani vs. Mani and others***[3]

2) ***Kanwar Shamsher Singh and others vs. Satbir Singh and others***[4]

3) ***Thoznilalar Transport Company vs. Valliammal and others***[5]

4) ***Oriental Insurance Co. Ltd. and another vs. Edward D'Cruz and others***[6]

has held thus:

> *"Para 13: That having regard to aforesaid principles, the only conclusion which can be arrived in this case is that the deceased no longer remains as a passenger, either gratuitous or otherwise, but wholly stands on the footage of a third party. Therefore, there is no substance in the plea raised by the appellant/insurance-company and there is no escape from its liability."*

12) When the above ratio is applied to the present case, here also the deceased suffered injuries only when he totally disembarked from the vehicle. So, irrespective of the fact in which capacity he travelled in the vehicle, he suffered accident only as a third party. Needless to say that Exs.B1 and B.2—policies invariably cover the risk of third party to full extent. In that view of the matter, the Insurance Company cannot repudiate its liability on the contention that Ex.B.2—policy do not cover the risk of workman/coolie. Though the Tribunal did not discuss these aspects but still its findings i.e, fastening liability on Insurance Company can be upheld for the aforesaid reason. In this regard, the decision in ***Prembai Patel***'s case (1 supra) cited by the appellant can be distinguished on facts. In that case, a truck was overturned on the way and its driver—Sunder Singh died. The lower Tribunal having regard to the contention of

owner and insurer to the effect that the deceased himself was at fault dismissed the claim. The claimants who are the L.Rs. of the deceased carried out appeal in High Court. The High Court having observed that accident took place due to the fact that arm bolt broke down and not due to any negligence of the deceased, allowed the appeal and awarded compensation against the owner and insurer. Aggrieved, the Insurance Company filed appeal before the Honourable Apex Court and mainly contended that policy being an act only policy, in the event of fixing liability, it should be restricted to the extent provided under Workmen's Compensation Act, 1923. The Apex Court allowed the appeal and restricted the liability of the Insurance Company to the extent payable under Workmen's Compensation Act and ordered the owner to pay the balance amount. It may be noted that in that case the deceased died as a workman but not as a third party as in the instant case.

13) In the result, this M.A.C.M.A is dismissed by confirming the award passed by the Tribunal in MVOP No.120 of 2002. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 07.09.2015
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[1] 2005(2) ACJ 1323 (SC)

[2] 2007 ACJ 1735 (AP) = 2007 (1) ALD 364

[3] 1990 ACJ 37 (Madras)

[4] 2006 ACJ 789 (Delhi)

[5] 1990 ACJ 201 (Madras)

[6] 1995 ACJ 1106 (Bombay)