HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.M.P.No.4469 of 2009
IN/AND
M.A.C.M.A.No.2912 of 2015

% Dated 30.12.2015

The Oriental Insurance Co.Ltd., Nizamabad

….Appellant

VERSUS

$ Ruquiya Bee and four others

… Respondents

! Counsel for Petitioner : Sri A. Ramakrishna Reddy

^ Counsel for Respondent No.5 : Sri P.Sriharinath

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 2003 ACJ 1 (SC)
2. 2003 ACJ 468
3. 2005 ACJ 721
4. 2007 ACJ 1043 (SC)
5. 2008 ACJ 1149
6. 2006 ACJ 1441
7. (2013) 11 SCC 554
8. (2004) 2 SCC 1
9. (2004) 8 SCC 517
10. (2004) 8 SCC 697
11. (2005) 6 SCC 172
12. (2008) 1 SCC 423
13. (2013) 2 SCC 41
14. 2013 ACJ 1
15. (2012) 5 SCC 234

IN THE HIGH COURT OF JUDICATURE AT

HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

<u>M.A.C.M.A.M.P.No.4469 of 2009</u>
IN/AND
<u>M.A.C.M.A.No.2912 of 2015</u>

Between :

The Oriental Insurance Co.Ltd., Nizamabad

… Appellant

AND

Ruquiya Bee and four others

… Respondents

DATE OF JUDGMENT PRONOUNCED: 30.12.2015

THE HON'BLE Dr. JUSTICE B. SIVA SANKARA 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 Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

<u>M.A.C.M.A.M.P.No.4469 of 2009</u>
IN/AND
<u>M.A.C.M.A.No.2912 of 2015</u>

COMMON ORDER:

Impugning the award of the Tribunal in O.P.No.552 of 2006 dated 23.10.2008, the claimants, who are no other than the wife and three major sons of the deceased F.Jabber Miya aged about 55 years, as per Ex.A.4-Postmortem report, in the claim filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') of Rs.6,00,000/- against owner and insurer of the goods van bearing No.AP 23 V 6149 of the accidental death of the deceased on 22.04.2006 while travelling in the goods van supra of the 1st respondent along with others to attend Valima function, from the finding of the Tribunal negating the contest of the insurer as the policy not covered the risk of passenger in the goods vehicle and it has issued only for the purpose goods vehicle, in granting compensation of Rs.2,76,000/- with interest at 9% per annum, the insurer-2nd respondent presented the appeal with the delay condonation of 110 days with the reasons assigned for the delay of administrative delay in giving opinion and processing of papers and for sanctioning of amount for filing appeal.

2. The contentions in the main grounds of un-numbered appeal are that the Tribunal gravely erred by ignoring the legal position settled of the Apex Court in **National Insurance Company v. Asha Rani**[1] reiterated in **Oriental Insurance Company Limited v. Devireddy**

Kondareddy and others[2] and followed subsequently in the case of **National Insurance Company Limited v. Bommitti Subbayamma and others**[3] besides **New India Assurance company Limited v. Vedavathi and others**[4] and **National Insurance Company Limited v. Prema Devi and others**[5]**,** there is no obligation for the insurer to issue policy covering the risk of passengers to a goods vehicle and once there is no policy covering any contractual liability for any person to travel in a goods vehicle, insurer cannot be made liable and Tribunal gravely erred in ignoring the fundamental principle and otherwise act policy under Section 147 of the Act does not cover the risk for passengers of a goods vehicle, but for driver and attendant or owner of the goods at best and thereby the award fixing liability on the insurer instead of exonerating is liable to be set aside apart from rate of interest of 9% per annum is excessive and contrary to the settled expression of the Apex Court in **Tamilnadu State Road Transport Corporation v. Rajapriya**[6]**,** hence to set aside the award and exonerate the insurer from the liability and order for recovery of the amount deposited and withdrawn by the claimants.

3. Whereas it is the contention of the learned counsel for the claimants-respondent Nos.1 to 4 herein are that there are no just grounds to condone the delay and there

are no merits in the appeal and once the Tribunal exercised the discretion for this Court while sitting in appeal there is nothing to interfere, hence, to dismiss the appeal.

4. The 5th respondent-owner of the vehicle even served failed to attend.

5. Heard and perused the material on record. The delay is condoned from the sufficient cause explained of the administrative delay in processing the file, for according sanction of funds to file present the appeal.

6. At the request of both sides, the appeal is taken up for hearing.

7. The Apex Court in similar facts in **National Insurance Company Limited v. Savitri Devi and others**[7] following the expression of Bommithi Subbhayamma supra, held categorically in respect of the goods lorry in respect of gratuitous passengers for the insurer not liable to be indemnified and to set aside with regard to the fixing liability on the insurer and the other expressions referred for that conclusion is **National Insurance Company Limited v. Baljit Kaur**[8]**, National Insurance Company Limited v. Challa Bharathamma and others**[9] and **National Insurance Company Limited v. V.Chinnamma and others**[10]**.** In fact, not only from that, but also as per the expression of the Apex

Court in Asha Rani's case referred supra, the law is fairly settled of insurer cannot be made liable to indemnify the owner of a goods vehicle for carrying passengers, who are unauthorized, there is a specific coverage of contractual liability of policy that was reiterated in Devireddy Kondareddy referred supra and also the Three-Judge Bench expression in **National Insurance Company Limited v. V.Prembai Patel and others**[11] and also reiterated even in subsequent expression in **National Insurance Company Limited v. Cholleti Bharathamma and others**[12] and further in the recent expression of the Apex Court one in **National Insurance Company Limited v. Saju P.Paul**[13] and also the other expression of the Apex Court in **Sanjeev Kumar Samrat and others v. National Insurance Company Limited**[14] in the absence of covering a contractual liability of the passenger risk of the goods vehicle, insurer cannot be made liable, thereby the Tribunal gravely erred in awarding liability on the insurer in awarding compensation by fixing liability to indemnify. Thus, the finding of the Tribunal fixing joint liability is to be set aside.

8. So far as depositing 50% of the compensation and permitting to withdraw is concerned, another Bench of this Court earlier concerned, as laid down by the Apex Court i n **United India Insurance Company Limited v.**

Laxmamma and others[15], once the claimants are permitted to withdraw insurer is entitled to recover only from the insured-owner of the vehicle.

9. Thus the appeal is allowed setting aside the award fixing joint liability on the insurer. However, so far as the amount whatever was deposited, if not permitted to withdraw, entitled to withdraw by the claimants and the insurer is entitled to recover from the insured-owner of the vehicle.

10. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

30th December 2015.

L.R. Copy to be marked – Yes.

mar

---

[1] 2003 ACJ 1 (SC)

[2] 2003 ACJ 468

[3] 2005 ACJ 721

[4] 2007 ACJ 1043 (SC)

[5] 2008 ACJ 1149

[6] 2006 ACJ 1441

[7] (2013) 11 SCC 554

[8] (2004) 2 SCC 1

[9] (2004) 8 SCC 517

[10] (2004) 8 SCC 697

[11] (2005) 6 SCC 172

[12] (2008) 1 SCC 423

[13] (2013) 2 SCC 41

[14] 2013 ACJ 1

[15] (2012) 5 SCC 234