

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

MACMA No.730 of 2009

Between:

The Oriental Insurance Company Ltd.

..... Appellant

And

1. Nama Narsiah and another

.... Respondents

DATE OF JUDGMENT PRONOUNCED: **01.06.2016**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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|--|----------|
| 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 Lordship wish to
see the fair copy of the Judgment? | Yes / No |

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ M.A.C.M.A.No.730 of 2009

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Between:

The Oriental Insurance Company Ltd.

..... Appellant

And

1. Nama Narsiah and another

.... Respondents

! Counsel for Appellant : Smt. I.Mammu Vani
^ Counsel for Respondent No2 : Sri Nimmagadda Satyanarayna
< Gist:
> Head Note:
? Cases referred:

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
M.A.C.M.A. No.730 of 2009

JUDGMENT:

Aggrieved by the Award dated 18.07.2006 in O.P.No.526 of 2004 (old OP No.1078 of 2002) passed by the Chairman, M.A.C.T-cum-II Additional District Judge, Nalgonda at Suryapet (for short ‘the Tribunal’), R2/Oriental Insurance Company preferred the instant appeal.

- 2) The factual matrix of the case is thus:
- a) The case of the claimant is that on 20.05.1994 at about 1 PM the claimant and their neighbours engaged a lorry bearing No.ADB 8690 to go to Janapadu Darga for performing Kandhuri and after performing the prayers while they were returning with their

belongings, on the way, the lorry turned turtle and the claimant and others received injuries. It is averred that accident was occurred due to rash and negligent driving by the driver of lorry. On these pleas, the claimant filed O.P.No.526 of 2004 under Section 166 of Motor Vehicles Act, 1988 (for short “the Act”) against respondents 1 and 2 who are owner and insurer of the offending lorry and claimed Rs.2,25,000/- as compensation.

- b) R1/owner remained ex-parte.
- c) R2/Insurance Company filed written statement denying all the material averments made in the claim petition and urged to put the claimant to strict proof. It contended that the accident was occurred due to rash and negligent driving by the rider of lorry and thus prayed to dismiss the O.P
- d) During trial, PWs.1 to 4 were examined and Exs.A1 to A14 were marked on behalf of claimant. Ex.B1—policy copy was marked on behalf of respondents.
- e) The lower Tribunal on appreciation of both oral and documentary evidence held that accident was occurred on account of rash and negligent driving of the lorry driver and awarded Rs.1,84,500/- as compensation against respondents 1 and 2 with proportionate costs and interest @ 9% p.a. under different heads as below:

Loss of earnings	Rs. 1,80,000-00
Loss of estate	Rs. 2,500-00
Funeral expenses	Rs. 2,000-00

Total	Rs. 1,84,500-00

Hence, the appeal by Insurance Company.

- 3) The parties in the appeal are referred as they stood before the lower Tribunal.
- 4) Heard arguments of Smt. I.Mammu Vani, learned counsel for appellant/Insurance Company and Sri Nimmagadda Satyanarayana, learned counsel for R1/claimant. Notice sent to R2 unserved.

5) Challenging the award insofar as fixing the liability on Insurance Company jointly along with the insured/owner of the vehicle, Smt. I.Mammu Vani, vehemently argued that the deceased and others travelled in the lorry as unauthorized/fare paid passengers and therefore, their risk was not covered as per the terms of the policy and though the Insurance Company has taken a specific plea to that effect in the counter, the Tribunal unfortunately has not considered the same and erroneously fixed liability on the Insurance Company. Learned counsel further argued that assuming for a moment that contention of the present claimant and other claimants to the effect that deceased and others travelled in the lorry as owners of their respective goods is true, still their risk will not be covered under Ex.B1—policy because the accident in this case was admittedly occurred on 20.05.1994 whereas the compulsory coverage of the policy to the risk of owner of the goods or his authorized representative in a goods vehicle was introduced in Section 147(1)(b)(i) of MV Act only with effect from 14.11.1994 by virtue of Amendment Act 54/94 which amendment came into force long after the accident in this case and therefore, compulsory coverage of the policy to the risk of the deceased and other travelers, even if they were presumed to be owners of their respective goods, does not arise. Learned counsel thus prayed to allow the appeal and exonerate the Insurance Company from the liability.

6) Per contra, learned counsel for 1st respondent/claimant argued that the claimant, the deceased who is his mother, and some of their neighbours engaged the lorry with their respective goods to go from their village—Madavaram to Janapadu Darga for performing Kandhuri and after performing the prayers while they were returning with their belongings, on the way the accident was occurred when the lorry turned turtle and this plea was specifically taken by the claimant and other claimants in their respective claim petitions and therefore, all the claimants are owners of their respective goods but not unauthorized passengers. He argued that the policy squarely covers the risk of the respective claimants

as the Insurance Company collected premium to extend coverage to the risk of the owners of the goods. Therefore, it is preposterous for the Insurance Company to contend that it does not incur liability because claimant and deceased are only unauthorized passengers. He further argued that even though compulsory coverage of risk of the owner of the goods or his authorized representative in a goods vehicle was introduced in Section 147 of MV Act much later to the accident in this case, still the risk of the respective claimants and deceased is covered under Ex.B1—policy because the Insurance Company has collected premium. Therefore, the Insurance Company cannot seek to repudiate its liability on the argument that compulsory coverage of the risk of the owner or his authorized representative was introduced long after the accident in this case. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination is:

“Whether the award of the Tribunal fixing the liability on the Insurance Company is factually and legally sustainable?”

8) **POINT:** Accident, involvement of lorry bearing No.ADB 8690, death of deceased and injuries to some others are all admitted facts.

a) On a careful analysis of facts and evidence, I am unable to countenance the argument of the Insurance Company. It is true that coverage of the risk of owner of the goods or his authorized representative carried in a goods vehicle was introduced for the first time in Section 147 of MV Act by virtue of Amendment Act 54/94 with effect from 14.11.1994 and prior to that there was no such compulsory coverage to the owner or his authorized representative in a goods vehicle. It is also true that accident in this case was occurred on 20.05.1994 much prior to aforesaid amendment which came into force on 14.11.1994. However, that does not mean that prior to the amendment, if parties i.e. insurer and insured covenanted and insured paid premium to give coverage to the risk of

owner or his authorized representative in a goods vehicle, their risk should not be covered under the terms of the policy. After all insurance policy is a contract between the contracting parties and if both agreed and suitable premium is paid, nothing prevents to cover the liability of owner or authorized representative of the goods vehicle or some others.

b) It should be noted that Amendment Act 54/94 only made coverage of the risk of the owner or the authorized representative in a goods vehicle a must with effect from 14.11.1994. But it did not prevent the parties to contract to cover the risk of owner or authorized representative in a goods vehicle prior to amendment. Therefore, merely because the Amendment Act 54/94 introduced long after the accident in this case, on that ground the Insurance Company cannot contend that policy would not extent to the risk of owner or authorized representative. What is essential is whether the insured in this case paid premium under Ex.B1 to extend the coverage to the risk of owner or his authorized representative and whether the respective claimants and deceased in this case and other connecting cases have travelled in the ill-fated lorry as owners of their respective goods. If answer is yes, the Insurance Company cannot disown its liability.

c) In this case, a perusal of Ex.B1—policy copy filed by the Insurance Company would show that the appellant/Insurance Company collected premium of Rs.50/- under the head Non-Fare Paid Passenger (NFPP). This premium would clearly cover the risk of the owner or authorized representative of the goods. Then, the perusal of pleadings and evidence would show that the claimants have taken a specific plea to the effect that they have engaged the ill-fated lorry to go to Janapadu Dargah for performing Kandhuri and after performing the same when they were returning along with utensils and tents etc. the lorry met with accident. Therefore, it is preposterous for Insurance Company to contend that claimants were only unauthorized passengers in the goods vehicle. On the other hand, they were the owners of their respective goods and their risk was squarely covered under

the terms of the policy. Therefore, the Insurance Company is jointly and severally liable along with insured to pay compensation.

9) Accordingly, this MACA filed by the Insurance Company is dismissed by confirming the award passed by the Tribunal in O.P.No.526 of 2004. No costs.

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

U. DURGA PRASAD RAO, J

Date: 01.06.2016
Murthy