THE HON'BLE SRI JUSTICE S. RAVI KUMAR

MACMA Nos.1859 & 2035 of 2011
and
MACMA No.477 of 2015

Date:20.06.2016

MACMA No.1859/2011:

Between:

National Insurance Co., Ltd.,
Rep by its Branch Manager, Nellore.

... Appellant.

AND

Muthyala Brahmaiah (died) and others.

...Respondents.

MACMA No.2035/2011:

National Insurance Co., Ltd.,
Rep by its Branch Manager, Nellore.

... Appellant.

AND

Muthyala Parameswari and another.

...Respondents.

MACMA No.477/2015:

National Insurance Co., Ltd.,
Rep by its Branch Manager, Nellore.

... Appellant.

AND

Yaram Radhamma and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

MACMA Nos.1859 & 2035 of 2011
and
MACMA No.477 of 2015

COMMON JUDGMENT:

All these appeals are preferred by Insurance Company questioning orders of Motor Accidents Claims Tribunals-cum-III & IV Additional District Judge, Nellore.

2. MACMA No.1859/2011 is preferred against orders in MVOP.No.640/2007, MACMA No.2035/2011 is preferred against orders in MVOP No.641/2007 on the file of Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Nellore and MACMA No.477/2015 is preferred against orders in MVOP No.520/2008 on the file of Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Nellore.

3. All these cases arise out of the same accident. Claimants in MVOP.No.640/2007 & MVOP.No.520/2008 are the legal representatives of deceased persons, who died in the accident. Claimant in MVOP.No.641/2007 is the injured in the accident.

As per the version of the claimants, the deceased persons and injured boarded Jeep bearing No.26-C-5959, which met with an accident near Yedavalli Village on Sangam Kaligiri Road, due to the rash and negligent driving of the Jeep driver. Motor Accidents Claims Tribunals, on a consideration of material evidence, granted compensation to all the claimants holding that the insurer should pay the compensation first and then recover the same from the insured as the risk was not covered under the policy. Insurance Company preferred these three appeals questioning the direction of pay and recover.

4. Heard both sides.

5. Advocate for appellants submitted that the issue on the subject is covered by a decision of this Court in **CHOLAMANDALAM MG GENERAL INSURANCE COMPANY LIMITED vs. BATHINI ELENDRA AND OTHERS**[1].

6. On the other hand, Advocate for claimants submitted that Claims Tribunals were right in ordering pay and recovery by relying on the decision of Hon'ble Supreme Court in **NEW INDIA ASSURANCE LIMITED vs. KAMALA & OTHERS**[2].

7. Advocate for appellants in reply to that submitted that this Court considered the very same judgment relied on by the claimants together with other Judgments and after analyzing law on the subject held that pay and recovery is not warranted when the risk is not covered by policy.

8. Now the point that would arise for my consideration in these appeals is whether orders of the Tribunals in giving a direction of pay and recover is legal and tenable.

9. I have perused the Judgment of this Court in **CHOLAMANDALAM MG GENERAL INSURNCE COMPANY LIMITED vs. BATHINI ELENDRA AND OTHERS**[1]. In that case, the deceased was travelling in a goods vehicle and the claimants therein contended that he was travelling in the capacity of owner of the goods, but as there is no evidence to support the same, this Court held that risk is not covered by policy and therefore held direction to pay and recover is not correct.

10. In this case, from the evidence, it is clear that deceased Brahmmaiah, deceased-Venkata Krishnaiah and injured-

M. Parameswari boarded the Jeep bearing No.AP-26-C-5959, which is meant for transportation of newspapers to different villages and the driver of the Jeep allowed both the deceased persons and the injured to travel in the said vehicle as passengers for which, there is no permit and no premium was paid covering the risk of passengers.

As rightly pointed out by Advocate for appellants, this Court in the decision referred to above after considering the Judgments of Hon'ble'ble Supreme Court in **NATIONAL INSURANCE COMPANY LIMITED vs. BOMMITHA SUBBAYAMMA**[3], **NATIONAL INSURANCE COMPANY LIMITED vs. AJIT KUMAR**[4], **NATIONAL INSURANCE COMPANY LIMITED vs. ASHARANI**[5] **ORIENTAL INSURNACE COMPANY LIMITED vs. DEVIREDDY KONDA REDDY**[6], **RAMASHRYA SING vs. NEW INDIA ASSURANCE COMPANY LIMITED**[7], **NEW INDIA INSURANCE COMPANY LIMITED vs. VEDAWATHI**[8], **NATIONAL INSURANCE COMPANY LIMITED vs. CHOLLETI BHARATAMMA**[9], **ORIENTAL INSURANCE COMPANY LIMITED vs. BIRJ MOHAN**[10], **NATIONAL INSURANCE COMPANY LIMITED vs. SANJEEV KUMAR SAMRAT**[11] and **NATIONAL INSURANCE COMPANY LIMITED vs. SAVITRIDEVI**[12] found fault with the direction of the Tribunal ordering pay and recover and allowed the appeal.

11. Learned Advocate for respondents relied on the Judgments of the Hon'ble Supreme Court in **NATIONAL INSURANCE CO.LTD., vs. BALJIT KAUR AND OTHERS**[13], **MANAGER, NATIONAL INSURANCE COMPANY LIMITED vs. SAJU P. PAUL AND ANOTHER**[14], **ORIENTAL INSURANCE CO. LTD., vs. NANJAPPAN AND OTHERS**[15] and also decisions of this Court in **UNITED INDIA**

INSURANCE CO., LTD., TADEPALLIGUDEM, WEST GODAVARI DISTRICT vs. N. APPI REDDY AND OTHERS[16], **BRANCH MANAGER, UNITED INDIA INSURNCE CO., LTD., DABAGARDENS, VISAKHAPATNAM vs. DADISETTI RAMANAMMA AND OTHERS**[17], **RELIANCE GENERAL INSURANCE CO., LTD., HYDERABAD vs. MOHD. SALEEM AND ANOTHER**[18] and **NEW INDIA ASSURANCE CO., LTD., KHAMMAM vs. KARAM DHANALAKSHMI AND OTHERS**[19].

12. The point involved in the decisions relied on by the respondents is whether the amendment has prospective effect or retrospective effect and the issue before me is not on that point. Issue before this Court is only on the point of pay and recover for which, this Court has already expressed opinion, therefore, those decisions have no bearing on the point involved in this case.

13. As the policy in this case also not covered the risk of the deceased persons and injured, pay and recover direction issued by the Tribunals cannot be sustained.

14. For these reasons, appeals are allowed in part by setting aside the direction of pay and recover by exonerating the appellant from the liability and fixing the entire liability on the owner of the vehicle to pay the compensation as determined by the Tribunals. If any amount is deposited by the appellant, it is entitled to withdraw the same and if any amount is withdrawn by the claimants from out of the deposited amount, appellant is entitled to recover that withdrawn amount from the owner of the vehicle. There shall be no order as to costs.

15. As a sequel, miscellaneous petitions, if any, pending in these appeals, shall stand disposed of.

JUSTICE S. RAVI KUMAR

Date:20.06.2016

mrb

[1] 2014 LawSuit(AP) 218

[2] 2001 ACJ 843

[3] 2005 12 SCC 243

[4] 2003 7 JT 520

[5] 2003 ACJ 1

[6] 2003 1 SUPREME 732

[7] 2003 ACJ 1550

[8] 2007 ACJ 1043

[9] 2008 ACJ 268

[10] 2007 7 SCALE 753

[11] 2013 ACJ 1

[12] 2013 11 SCC 554

[13] (2004) 2 SCC

[14] (2013) 2 Supreme Court Cases 41

[15] AIR 2004 SUPREME COURT 1630 (1)

[16] 2011 (4) ALD 778 (DB)

[17] 2013 (5) ALD 504

[18] 2013 (3) ALD 246

[19] 2013 (3) ALD 124