HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.153 OF 2009

JUDGMENT:

Aggrieved over the order and decree, dated 03.07.2007, in O.P. No.325 of 2005, passed by the learned Chairman, Motor Accidents Claims Tribunal, Anantapur (for short 'Tribunal'), whereby and whereunder, awarded a compensation of Rs.1,44,900/- for the death of one Sake Chowdappa in a road accident as against the claim of Rs.2,25,000/- made under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the United India Insurance Company Limited, Anantapur Division, by its Divisional Manager preferred the instant Civil Miscellaneous Appeal; mainly on the grounds that driver of the auto-rickshaw bearing No.AP-02-U-5395, in which Chowdappa was travelling at the time of accident, did not have driving licence nor did he hold badge and, thus, committed breach of conditions of insurance policy and that the auto-rickshaw was overloaded as seven (7) persons were travelling therein besides the deceased as against three (3) passengers and one (1) driver permitted to travel, but the Tribunal failed to properly appreciate the same and awarded compensation making it jointly and severally liable to pay compensation, though, ought not to have fastened liability on it.

2. The appellant, which is insurance company, is respondent No.2 in the O.P. before the Tribunal, while respondent Nos.1 to 4 are

petitioners (claimants) and respondent No.5, who is owner of the auto-rickshaw that involved in the accident, is respondent No.1.

3. For the sake of convenience, the parties are referred to as arrayed in the O.P. before the Tribunal.

4. Briefly stated, the facts are that on 17.03.2005 at about 5.30 p.m., while Chowdappa was travelling in the auto-rickshaw bearing No.AP-02-U-5395, having boarded it at Anantapur to proceed to Kattakindapalli village and when it reached Rudrampeta village cross-road on Anantapur - Alamuru Road, since the driver drove it in a rash and negligent manner, could not control the vehicle which lead to turning the auto-rickshaw upside down resulting in head injury to Chowdappa, who succumbed to injuries, and that the other passengers sustaining injuries.

5. Petitioners claiming that petitioner Nos.1 to 3 are unemployed and petitioner No.4 was minor and a school going child dependants on the deceased, sought the aforesaid amount from respondent Nos.1 and 2, who are owner and insurer, respectively, of the auto-rickshaw involved in the accident.

6. Respondent No.1, owner of the auto-rickshaw, remained *ex parte* before the Tribunal.

7. Respondent No.2, insurer, offered resistance on the ground that the auto-rickshaw was overloaded and there was no place to sit at

all and that the deceased since sat by the side of the driver, voluntarily invited risk, and also sought to prove that the driver did possess valid subsisting driving licence at the relevant time.

8. The Tribunal framed the following four (4) issues in order fix responsibility in taking place of the accident and to determine compensation to which the petitioners are entitled.

> "1. Whether the accident occurred on 17-03-2005 due to rash and negligent driving of the auto bearing No.AP-02-U-5395 by its driver the auto turned turtle and caused the death of Harijana Sake Chowdappa?
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> 2. Whether the driver of the crime vehicle had valid driving licence, fitness certificate, permit and R.C. at the time of accident or not?
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> 3. Whether the petitioners are entitled to compensation, if so, to what amount and from which respondent?
>
> 4. To what relief?"

9. During enquiry, on behalf of the petitioners, PWs.1 and 2 were examined and Ex.sA-1 to A-5 were marked, whereas, on behalf of the insurer, RWs.1 and 2 were examined and Exs.B-1 to B-5 were marked.

10. The Tribunal answered issue Nos.1 to 3 in favour of the petitioners and on issue No.4, having arrived at the conclusion that petitioner No.4 alone is entitled to compensation of Rs.1,44,900/-,

awarded the same with interest at 7.5% per annum, making both the insured and the insurer jointly and severally liable to pay compensation, dismissed the claim against petitioner Nos.1 to 3 on the ground that they cannot be construed as dependants.

11. Heard Sri M.V. Raja Ram, learned standing counsel for the insurer (appellant), Sri Karri Murali Krishna, learned counsel for the petitioners (claimants), and Sri I. Venkata Prasad, learned counsel for the insured (respondent No.1).

12. So far as the finding recorded on issue No.1 is considered, it is clear that due to rash and negligent driving of the driver of the auto-rickshaw, the accident had occurred and, though, the insurer has taken the plea that there was overloading on account of which, the accident had occurred, there is no material to show that on account of overloading the auto-rickshaw with the passengers more than the permitted to travel, the accident did occur, as such, the finding recorded by the Tribunal on issue No.1 cannot be interfered with.

13. On issue No.2, though, the Tribunal recorded a finding that since the insurer has not let in any evidence and must fail, still, from paragraphs 30 to 34, discussed about the driver of the auto-rickshaw possessing valid driving licence to drive the auto-rickshaw based on the evidence of RW.2 and as regards the driver of the auto-rickshaw not wearing metallic badge as contemplated under Rule 37 of the Motor Vehicles Rules, placing reliance on a decision of this Court in

New India Assurance Company Limited v. Bhimavarapu Pratap (2006 ACJ 1076) held that it would not amount to violation of terms and conditions of the insurance policy and thereby rejected the stand of the insurer.

14. However, concerning the driver allowing more than permitted capacity of the passengers to travel in the auto-rickshaw, since the First Information Report and the charge sheet disclose that eight (8) persons were actually travelling in the auto-rickshaw at the time of accident, observing that except the deceased herein, rest of the passengers sustained simple injuries, attributed negligence to the driver of the auto-rickshaw contributing to the accident and, thus, on the amount determined, deducted 25% thereof and arrived at Rs.1,44,900/-. Thus, dealt with the stand taken by the insurer so far as overloading of the auto-rickshaw at the time of accident is concerned.

15. In the grounds of appeal, the aforesaid two contentions have been agitated.

16. When the evidence of RW.2 is seen, it is clear that the driver of auto-rickshaw was possessing valid subsisting driving licence to drive transport carrying vehicle and non-transport vehicle but he was not wearing badge and uniform at the time of accident. Even the admission made by RW.2 cuts at the root of the stand taken by the insurer. Though, in specific terms, RW.2 has stated the same

referring to Exs.B-2 and B-4, still, the insurer once again agitates the same ground in the present appeal and, therefore, the same needs no advertence at all, and, therefore, the same is rejected.

17. Concerning overloading of the vehicle, it cannot be disputed that as many as eight (8) passengers were travelling in the auto-rickshaw and there has been violation of terms and conditions of the insurance policy under Ex.B-1 which would cover risk of three (3) passengers, as such, the same requires examination in the light of decided cases.

18. Learned counsel for the insurer would place reliance on ruling of the Hon'ble Supreme Court in **National Insurance Company Limited v. Anjana Shyam**[1]. It would be appropriate to refer to what has been declared by the Hon'ble Supreme Court in paragraph Nos.10 to 17 in the aforesaid decision (Supra 1):

> "10. Under Section 146 of the Motor Vehicles Act, 1988, no vehicle can be plied on the road without taking out an insurance against third party risk. Section 147(1)(b)(ii) provides that in order to comply with the requirements of Chapter XI of the Act, a policy of insurance must be a policy which insures persons or classes of persons, specified in the policy to the extent specified in sub-section (2) of that Section against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. The limit in terms of Section

[1] AIR 2007 SC 2870

147(2)(a) of the Act is the amount of liability incurred. Under Section 149(1) of the Act, the insurance company has the obligation, subject to the provisions of that Section, to satisfy the decree or award made by the concerned court or Tribunal on claims by third parties. Section 149(2) of the Act provides that no sum shall be payable by an insurer unless notice of the proceedings had been given to the insurance company before the commencement of the proceedings through the court or the Claims Tribunal, and that it shall not be liable if there has been a breach of a specified condition of the policy as indicated in that sub-section. These cover use of the vehicle for hire or reward where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or use for organized racing and speed testing, or use for a purpose not allowed by the permit under which the vehicle is used where the vehicle is a transport vehicle, or use without side-car being attached where the vehicle is a motor cycle, or there is a breach of a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification, or a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion, or that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular. Under sub-section (5), it is provided that if the amount which an insurer becomes liable to pay under this Section in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would, apart from the provisions of this Section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person. Therefore, on the scheme of the Act, the insurance company, if it is not able to establish that there is a fundamental breach of a condition which would enable it to disclaim liability, it may have to pay the amount of compensation adjudged by a Claims Tribunal subject of course to its rights to recover from the insured, the owner of the vehicle such excess as it is obliged to pay.

11. Section 149 of the Act speaks of the judgment or award in respect of the liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 of the Act having to be satisfied. Section 147(1)(b) compels insuring the person or classes of persons specified in the policy to the extent specified in sub-section (ii) of that Section. The case on hand will come under sub-clause (ii) of clause (b) of Section 147 (1) of the Act which obliges the owner to take out insurance compulsorily against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

12. Section 58 of the Act makes special provisions in regard to transport vehicles. Sub-Section (2) provides that a registering authority, when registering a transport vehicle, shall enter in the record of registration and in the certificate of registration various particulars. Clause (d) provides that if the vehicle is used or

adapted to be used for carriage of passengers, the number of passengers for whom accommodation is provided. Thus the registration of the vehicle, which alone makes it usable on the road, records the number of passengers to be carried and the certificate of registration also contains that entry. So, an insurance company insuring the passengers carried in a vehicle in terms of Section 147(1)(b)(ii) of the Act, can only insure such number of passengers as are shown in the certificate of registration. The position is reinforced by Section 72 of the Act, which deals with grant of stage carriage permits. Sub-Section (2) provides that when a permit is decided to be granted for a stage carriage, the Regional Transport Authority can attach to the permit one or more of the conditions specified therein. Clause (vii) is the condition regarding the maximum number of passengers that may be carried in a stage carriage. Overloading also invites a consequence which can be termed penal. Section 86 of the Act provides for cancellation of a permit if any condition contained in the permit is breached. Therefore, the apparent wide words of Section 147(1)(b)(ii) of the Act have to be construed harmoniously with the other provisions of the Act, namely, Sections 58 and 72 of the Act. As early as in 1846, Dr. Lushington in Queen v. Eduljee Byramjee [(1846) 3 MIA 468] posited that to ascertain the true meaning of a clause in a statute the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself. This Court has accepted this approach in innumerable cases. Thus, the expression 'any passenger' must be understood as passenger authorized to be carried in the vehicle and 'use of the vehicle' as permitted use of the vehicle. Affording of insurance for more number of passengers than permitted, would be illegal since in that case the manifest intention would be the overloading of the vehicle, something not contemplated by law. Thus, it is not possible to accept a contention that the insurance can be taken to cover more passengers than permitted by the certificate of registration and the permit as a stage carriage and that it will cover all the passengers overloaded. Of course, in these cases, there is no dispute that the insurance cover took in only the permitted number of passengers.

13. In this situation, the insurance taken out for the number of permitted passengers can alone determine the liability of the insurance company in respect of those passengers. In terms of Section 149 of the Act, the duty of the insurer is only to satisfy judgments and awards against persons insured in respect of the third party risk. Obviously, this is to the extent the third party risk is coverable and is covered. Section 149 of the Act speaks of judgment or award being obtained against any person insured by the policy and the liability of the insurer to pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder subject to any claim the insurer may have against the owner of the vehicle. Section 149 could not be understood as compelling an insurance company to make payment of amounts covered by decrees not only in respect of the number of persons covered by the policy itself but even in respect of those who are not covered by the policy and who have been loaded into the vehicle against the terms of the permit and against the terms of the condition of registration of the vehicle and in terms of violation of a statute.

14. It is true that the provisions in Chapter XI of the Act are intended for the benefit of third parties with a view to ensure that they receive the fruits of the awards obtained by them straightaway with an element of certainty and not to make them wait for a prolonged recovery proceeding as against the owner of the vehicle. But from that, it would not be possible to take the next step and find that the insurance company is bound to cover liabilities not covered by the contract of insurance itself. The Act only imposes an obligation to take out insurance to cover third party risks and in the case

of stage carriages, the passengers to be carried in the vehicle and the passengers to be carried in the vehicle can be understood only as passengers authorized or permitted to be carried in the vehicle.

15. In spite of the relevant provisions of the statute, insurance still remains a contract between the owner and the insurer and the parties are governed by the terms of their contract. The statute has made insurance obligatory in public interest and by way of social security and it has also provided that the insurer would be obliged to fulfil his obligations as imposed by the contract and as overseen by the statute notwithstanding any claim he may have against the other contracting party, the owner, and meet the claims of third parties subject to the exceptions provided in Section 149(2) of the Act. But that does not mean that an insurer is bound to pay amounts outside the contract of insurance itself or in respect of persons not covered by the contract at all. In other words, the insured is covered only to the extent of the passengers permitted to be insured or directed to be insured by the statute and actually covered by the contract. The High Court has considered only the aspect whether by overloading the vehicle, the owner had put the vehicle to a use not allowed by the permit under which the vehicle is used. This aspect is different from the aspect of determining the extent of the liability of the insurance company in respect of the passengers of a stage carriage insured in terms of Section 147(1)(b)(ii) of the Act. We are of the view that the insurance company can be made liable only in respect of the number of passengers for whom insurance can be taken under the Act and for whom insurance has been taken as a fact and not in respect of the other passengers involved in the accident in a case of overloading.

16. Then arises the question, how to determine the compensation payable or how to quantify the compensation since there is no means of

ascertaining who out of the overloaded passengers constitute the passengers covered by the insurance policy as permitted to be carried by the permit itself. As this Court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident. It serves a social purpose. Keeping that in mind, we think that the practical and proper course would be to hold that the insurance company, in such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy. Illustratively, we may put it like this. In the case on hand, 42 passengers were the permitted passengers and they are the ones who have been insured by the insurance company. 90 persons have either died or got injured in the accident. Awards have been passed for varied sums. The Tribunal should take into account, the higher of the 42 awards made, add them up and direct the insurance company to deposit that lump sum. Thus, the liability of the insurance company would be to pay the compensation awarded to 42 out of the 90 passengers. It is to ensure that the maximum benefit is derived by the insurance taken for the passengers of the vehicle, that we hold that the 42 awards to be satisfied by the insurance company would be the 42 awards in the descending order starting from the highest of the awards. In other words, the higher of the 42 awards will be taken into account and it would be the sum total of those higher 42 awards that would be the amount that the insurance company would be liable to deposit. It will be for the Tribunal thereafter to direct distribution of the money so deposited by the insurance company proportionately to all the claimants, here all the 90, and leave all the claimants to recover the balance from the owner of the vehicle. In such cases, it will be necessary for the Tribunal, even at the initial stage, to make appropriate orders to ensure that the amount could be recovered from the owner by ordering attachment or by passing other restrictive orders

> against the owner so as to ensure the satisfaction in full of the awards that may be passed ultimately.
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> 17. In these cases, we find that this Court has not issued notices to the claimants. We are therefore not in a position to vary the decision of the High Court as regards the claimants. But, we have clarified the law on the question and we grant the insurance company a decree to recover the excess amount that it has deposited, from the owner, who has been issued notice and who has contested these appeals. Obviously, the principle indicated by us here will have to be applied by the Tribunal in the case from which the appeal against the interim award has been filed by the insurance company."

19. In the present case, the Tribunal taking the view that by allowing more number of passengers by the driver of the auto-rickshaw, than the permitted number of persons by the Road Transport authority, finding that the driver contributed to the accident to the extent of 25% and therefore deducted proportionate amount from the compensation determined. Admittedly, even according to the observation made by the Tribunal, the other passengers did receive only simple injuries. The insurer has not established, by placing on record, whether the other injured have laid claim petitions and, if so, whether any amounts have been awarded, and, if awarded, the same total would have been made available to this Court so as to apply the principle laid down by the Hon'ble Supreme Court in paragraph No.16 in the decision referred supra.

20. Therefore, it has to be held that even that ground is not available to the insurer to exonerate it from the liability of making payment of compensation awarded by the Tribunal on the ground of overloading the auto-rickshaw by allowing to travel more than the permitted passengers.

21. Thus, viewed from any angle, there is absolutely no merit in the appeal.

22. Therefore, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the miscellaneous appeal stand disposed of.

A. SHANKAR NARAYANA, J

November 2, 2016.
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