HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1278 of 2009

JUDGMENT:

Aggrieved by the Award dated 12.12.2006 in O.P.No.282 of 2006 passed by the Chairman, M.A.C.T-cum-Principal District Judge, Medak at Sangareddy (for short 'the Tribunal'), the New India Assurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The 1st claimant is wife; claimants 2 and 3 are sons and 4th claimant is the daughter of the deceased—Daravoth Amriya. Their case is that on 09.11.2004 at about 10 PM, when the deceased was travelling in tractor/trailer bearing No.AP 07/V 4439 as loading and unloading coolie and when it reached outskirts of Maddulvai village near Sanekunta, the driver of the tractor drove the same at high speed in a rash and negligent manner and due to which the tractor turned turtle, the deceased fell down and the tractor along with sugarcane fell on him resulting his instantaneous death. It is averred that accident was occurred due to rash and negligent driving by the driver of tractor. On these pleas, they filed O.P.No.282 of 2005 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 tractor and claimed Rs.3,00,000/- as compensation.

b) R1/owner remained ex-parte.

c) R2/Insurance Company filed counter denying all the averments made in the claim petition and urged to put the claimants to strict proof of the same. It contended that deceased himself was responsible for the accident and the claimants have to prove that accident was occurred due to rash and negligent driving of the tractor driver and he had valid and effective driving licence at the time of accident. It also contended that deceased was travelling in the tractor as unauthorized passenger which is in violation of policy conditions and hence, R2 is not liable to pay any compensation. Finally, R2 contended that compensation claimed by the claimants is highly excessive and exorbitant and prayed to dismiss the OP.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A6 were marked on behalf of claimants. RW1 was examined and Ex.B1—policy copy was marked on behalf of respondents.

e) The Tribunal on appreciation of evidence on record fixed fault on driver of the tractor and ultimately awarded Rs.3 lakhs/- as compensation against respondents 1 and 2 with proportionate costs and interest @ 7.5% p.a.

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 Sri Sriman, learned counsel for appellant/Insurance Company. Notices sent to respondents were served, but there is no representation on their behalf.

5) Challenging the award, the main plank of argument put-forth by learned counsel for appellant/Insurance Company is that the vehicle involved in the accident is a tractor which is meant for agricultural use and seating capacity provided in it is only for one person i.e. driver and none other is permitted to travel in the said vehicle and in that view of the matter, it is evident that the deceased travelled only as an unauthorized passenger in the vehicle and met with death and hence his liability is not covered under Ex.B1—policy. He would alternatively argue that assuming that the deceased travelled as loading and unloading coolie for unloading the sugarcane as contended by the claimants, still the Insurance Company would not attain any liability for the reason that the 1st respondent/owner did not pay any premium to extend policy to cover the risk of collies. Learned counsel while narrating the terms of policy sought to explain that premium of Rs.25/- paid under caption "*W.C. to employee one*" refers to the driver as he was the only employee that could be engaged with the vehicle but it would by no means refer to others much less coolies. He thus concluded that neither in the capacity of an unauthorized passenger nor as a coolie, the risk of the deceased was covered under Ex.B1—policy and hence the Insurance Company deserves to be exempted from liability. He relied upon the following decisions on the proposition that when premium was not paid in respect of a particular class of person travelled in a vehicle, his risk will not be covered under the terms of the policy.

1. *The New India Assurance Co. Ltd., rep. by its Branch Manager vs. Lodya Shankar and others*[1]

2. *The Branch Manager, United India Insurance Co. Ltd. vs. Kondakotla Saroja wife of late Kondakotla Rajamouli*[2]

3. *Dudekula Salabee vs. R. Siva Sankar Reddy and another*[3]

4. *Ramashray Singh vs. New India Assurance Co. Ltd. and others*[4]

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

"Whether the Tribunal was right in fastening liability on the Insurance C*ompany?"*

7) **<u>POINT</u>**: Accident, involvement of tractor bearing No. AP 07/V 4439 and death of the deceased are not in dispute. The main aspect for determination is the capacity in which the deceased travelled in the offending vehicle and whether the policy covers his risk or not. As per the pleadings in OP and oral and documentary evidence adduced on behalf of claimants, deceased travelled in the ill-fated tractor as loading and unloading coolie to unload the sugarcane and hence his risk was covered under the terms of the policy. Per contra, the contention of the Insurance Company as already stated supra is two fold: firstly, he travelled only as an unauthorized passenger, whose risk was not covered at all and secondly, even assuming that he travelled as loading and unloading coolie, still by din't of not paying any additional premium his risk was not covered either.

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[1] 2004 (3) ALD 400
[2] 2008 (5) ALD 288 (DB)
[3] 2008 (1) ALD 161
[4] (2003) 10 SCC 664

a) In this context, I perused the evidence. A perusal of Ex.A2—inquest report shows that deceased travelled in the vehicle as loading and unloading coolie. Since Ex.A2 was prepared within short time after the accident of the deceased, the contents therein cannot be presumed to have been manipulated to suit the contention of the claimants. Therefore, the plea of the claimants that the deceased travelled in the capacity of coolie can be believed.

b) Now, it has to be seen whether the policy covers his risk or not. A perusal of Ex.B1 shows that premium was paid under different heads but no additional premium was paid to cover the risk of coolies. As rightly argued, the premium of Rs.25/- paid under the head "*W.C. to employee one*" refers to the driver but not coolies. So, the contention of the Insurance Company that even if the deceased were to be accepted as a coolie, still his risk will not be covered under Ex.B1 can be accepted. However, that is not the end of the matter. In my considered view, the Insurance Company cannot escape its liability by merely convincing the Court that risk of the deceased was not covered either in the capacity of an unauthorized passenger or coolie. When the pleadings and evidence are perused with reference to the manner of occurrence of accident, they would depict that when the vehicle turned turtle the deceased fell down and thereafter the sugar cane load and the trailer fell on him causing his death. That being so, it can be said, the deceased sustained injuries after falling down from the vehicle. Needless to say that when he fell down from the vehicle he was totally disembarked from the vehicle and therefore, at that time he was only a third party with reference to the crime vehicle. Since the deceased received injuries and suffered death in the capacity of a third party and as Ex.B1—policy shows that premium was paid to cover the risk of third parties, the Insurance Company is liable to answer the claim. This aspect was well delineated in a catena of decisions i.e., In ***National Insurance Company Limited vs. Zuleka Begum***[5], this Court in similar circumstances referring to the cases cited in ***United India Insurance Company Limited rep. by its Branch Manager vs. Kurva Yejju Mallamma and others***[6], ***A Subramani vs. Mani and others***[7], ***Kanwar Shamsher Singh and others vs. Satbir Singh and others***[8], ***Thoznilalar Transport Company vs. Valliammal*** *and others*[9] *and* ***Oriental Insurance Co. Ltd.*** *and* ***another vs. Edward D'Cruz and others***[10], has held that when a person who fell down from a vehicle and injured will no longer remain as a passenger but a third party and in such event the policy shall invariably cover his risk. Therefore, Insurance Company cannot claim exemption from liability.

8) In the result, this appeal filed by the Insurance Company is dismissed with costs.

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

U. DURGA PRASAD RAO, J

Date: 17.09.2016
Murthy

[5] 2015(1) ALT 162
[6] 2007 ACJ 1735 (AP) = 2007 (1) ALD 364
[7] 1990 ACJ 37 (Madras)
[8] 2006 ACJ 789 (Delhi)
[9] 1990 ACJ 201 (Madras)
[10] 1995 ACJ 1106 (Bombay)