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

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M.A.C.M.A. No.1016 of 2009

Between:
Dashetty Raji Reddy
and another. .... Appellants

And

Maram Ram Reddy
and another. ... Respondents

DATE OF JUDGMENT PRONOUNCED: **28.07.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD 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 Lordship wish to see the fair copy of the Judgment? Yes / No

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.1016 of 2009

JUDGMENT:

It is a claimants appeal. The deceased—D.Sampath, a 25 years old bachelor went for coolie work on the morning of 25.06.2007 and loaded mud in the tractor-cum-trailor bearing No.AP 15 U 5103/5104 in Gollapalli outskirts and while returning towards Narayanarao Kunta, the driver of the tractor drove the vehicle at high speed and in a rash and negligent manner and thereby the deceased, who was standing on the connecting hook between the tractor and trailor fell down as the tractor-cum-trailor turned turtle and he suffered injuries and died while being shifted to MGM Hospital, Warangal. The claimants who are his parents, filed O.P.No.569 of 2007 claiming compensation of Rs.5,10,000/- against respondent Nos. 1 and 2, who are owner and insurer of the offending vehicle.

2 a) First respondent contended that there was no fault of the driver and the deceased himself fell down due to his own fault.

b) Second respondent in its Counter and Additional Counter opposed the claim mainly on the contention that the deceased was an unauthorized passenger and hence, the policy does not cover his risk.

c) During trial, Pw.1 was examined and Exs.A.1 to A.6 were marked on behalf of claimants. On behalf of respondents, Rw.1 was examined and Exs. B.1 to B.6 were marked.

3) The Tribunal on appreciation of evidence though came to the conclusion that the deceased was not a gratuitous passenger, but a loading and unloading coolie, however held that the risk of the passengers including the loading and unloading coolies was not covered under the policy as additional premium was not paid for that purpose. Accordingly, it exonerated the respondent No.2 and fixed liability only on first respondent. Compensation is concerned, it arrived at Rs.2,00,000/- but deducted 25% towards negligence on the part of the deceased as he travelled on the hook of the vehicle and ultimately granted Rs.1,50,000/- with proportionate costs and interest at 7.5% p.a.

Hence, the appeal by the claimants.

3) The parties in this appeal are referred as they stood before the Tribunal.

4) Heard arguments of Sri N. Hari Prasad, learned counsel for appellants/claimants, and Sri N. S. Bhaskara Rao, learned counsel for respondent No.2. Though notice to R.1 was served but there is no representation on his behalf, hence treated as heard.

5) Severely criticizing the Award in exonerating the insurance company on the premise that no additional premium was paid to give coverage to the risk of loading and unloading coolies, learned counsel for appellants/claimants taking this Court through Ex.B.1—Policy, firstly argued that the insurer paid premium to give coverage to “Paid Driver/Operation/Maintenance” and the operation of tractor-cum-trailor, which is a goods vehicle, means nothing but loading and unloading of the goods i.e., soil in the present instance and the deceased, who was engaged for the purpose of Operation of the tractor-cum-trailor shall be deemed covered under Ex.B.1. He relied upon the following Judgments:

(1) **Hanumanagouda vs. United Indian Insurance Company Limited and others**[1]**.**

(2) **Oriental Insurance Company Limited vs. S.Ramanjaneyulu and others**[2]**.**

He thus sought to fasten the liability on the insurance company also.

b) Secondly, criticizing the quantum of compensation as low, learned counsel argued that the Tribunal took a very meager amount of Rs.1500/- as the monthly earnings of the deceased and having regard to the fact that the deceased was young and able bodied man and a coolie, the Tribunal ought to have fixed his monthly earning at least as Rs.3000/-. Similarly, the Tribunal also ought to have added future prospectus and due to above shortcomings, the compensation was drastically reduced.

7 a) Per contra, while supporting the Award learned counsel for respondent/insurance company firstly argued that the deceased was only an unauthorized passenger and therefore his risk will not be covered and even assuming that he travelled as loading and unloading coolie, still, the insurance company will not attain any liability because no additional premium was paid to cover the risk of such loading and unloading coolies. Hence, the Tribunal rightly exonerated it. He contended that the term ‘Operation’ employed in Ex.B.1 do not cover the risk of loading and unloading coolies. He relied upon the following decisions:

(1) **Divisional Manager, New India Assurance Company Limited,**

Nizamabad vs. Zaheer Ahmed and others[3]**.**

(2) **National Insurance Company Limited vs. Bramaranbike**[4]**.**

(3) **United India Insurance Company Limited vs. C.I. Abraham**[5]**.**

(4) **National Insurance Company Limited vs. Rita Goyal and others**[6]**.**

(5) **Bajaj Allianz General Insurance Company Limited vs. Kanchan and others**[7]**.**

(6) **Vachala and others vs. V.R.Kumar and another**[8]

b) Secondly, he argued that the compensation awarded was just and reasonable and there is no need to revise the same. He thus prayed to dismiss the appeal.

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

"Whether the Award passed by the Tribunal is legally and factually sustainable?"

9) **POINT**: The accident, involvement of Tractor-cum-trailor bearing No.AP 15 U 5103/5104 and the death of deceased are admitted facts. It is a further admitted fact that R.1 and R.2 are the owner and insurer of the crime vehicle respectively. The bone of contention is about the coverage of Ex.B.1—Policy to the risk of deceased. As per the contention of Insurance Company through the mouth of RW.1 is that the policy, which was in force from 25.03.2007 to 24.03.2008 under Ex.B.1 was a standing form of commercial policy, which is a package policy, and the tractor-cum-trailor involved in the accident is a commercial vehicle meant for carrying goods and it cannot carry any passengers and the policy would only cover the third party liability and the deceased was an unauthorized passenger and travelled by standing on the connecting hook of the tractor-cum-trailor and hence his risk is not covered. It is further contended that the passengers including loading and unloading coolies are strictly prohibited from travelling on the vehicle.

10) Per contra, the contention of the appellants/claimants, as stated supra,

is that the schedule of the premium contains therein the class of persons for whose risk premium was paid and this schedule includes legal liability to persons such as "Paid driver/operation/maintenance" and operation of the Tractor-cum-trailor which is a goods vehicle means nothing but loading and unloading of any type of goods and since the deceased was engaged by R.1 to load and unload the mud from tank bund and as the accident was occurred while the deceased was returning, it shall be deemed that his risk is covered under Ex.B.1. So, in this context, two important aspects will arise for consideration:

i) Whether the deceased travelled in the vehicle as a gratuitous passenger/unauthorized passenger or as a loading and unloading coolie?

ii) If he travelled as a coolie, whether his risk is covered under the terms of the Policy?

11) The first aspect is concerned, there is ample evidence to hold that the deceased travelled as a loading and unloading coolie. In the claim petition, it is clearly averred that on the morning of fateful day, the deceased went to attend the coolie work under Grameena Upadhi Pathakam on the crime vehicle to load mud at Gollapalli outskirts and after loading while he was returning, he met with an accident. In Ex.A.1—FIR, Ex.A.2—Charge sheet and Ex.A.3—Inquest Report also this fact was clearly mentioned. In fact, first respondent in its Counter admitted that on 25.06.2007 the tractor-cum-trailor was used to transport the mud, but only his contention was that the accident was occurred due to the fault of the deceased himself, which is altogether a different aspect. Though insurance Company contended that the deceased was only a gratuitous passenger, but it did not produce any positive evidence in that regard. Thus, as stated supra, the evidence on record clarifies that the deceased at the relevant time of accident was engaged as a loading and unloading coolie for transporting mud in the crime vehicle.

12) In respect of second aspect, a perusal of Ex.B.1—Policy shows that in Section-II, the liability to third parties is described with the proviso. Sub Section 1 of Section-II reads thus:

> *"subject to the limits of liability as laid down in Schedule hereto the company will indemnify the insured in the event of an accident*

caused by or arising out of the use of the vehicle against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect of

i) Death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the vehicle.

ii) Damage to property caused by the use (including the loading and/or unloading) of the vehicle".

13) The above Section reads that subject to the limits of liability as laid down in schedule of premium, the insurance company is liable for the death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the vehicle. From this, it is clear that if a third party is engaged for loading and unloading purposes and met with an accident, his risk will be covered under the terms of the policy provided the premium is paid under schedule of premium. In this context, a perusal of schedule of premium shows that the different amounts were paid to give coverage to different classes of persons, of which one is "legal liability to person for Paid driver/operation/maintenance: Rs.150/-". The total premium paid was Rs.1600/-. When Section 2 of the policy is studied in conjunction with schedule of premium, the word "Operation" can be taken as the operation of loading and unloading of the goods because the policy was issued for both tractor-cum-trailor under the heading "commercial vehicles package policy" knowing that the said vehicle will be used for transporting different types of goods. Under Ex.B.1, transportation of soil, mud and clay etc., is not specifically barred. So, as contended by the claimants, it can be held that the policy squarely covers the risk of the deceased, who travelled in the vehicle in the capacity of an engaged coolie. In my view, the Tribunal was not right in holding that no premium was paid to give coverage to his risk. The application of the term "operations" to "loading and unloading operations" in the given set of facts is permissible and my view is fortified by the decision of the Hon'ble Apex Court in ***Hanumanagouda***'s case (1 supra), wherein also the Hon'ble Apex Court extended the term "operations" to a clerical cadre Gumashta, who accompanied the goods in the lorry for the purpose of delivery and met with an accident and died. The Hon'ble Apex Court in that context observed that the clause "persons employed in connection with the

operations" is clearly over and above the coverage provided by the policy to "persons employed in connection with loading/unloading of motor vehicle". As Gumastha, the deceased was accompanying the goods in transit for the purpose of delivery of goods and hence the deceased would be covered by the expression "persons employed in connection with operation of motor vehicle". Thus, the Hon'ble Apex Court having regard to the fact situation, extended the term "operation" employed in policy, to a clerk who travelled in the vehicle to effect delivery of the goods. Therefore, in the instant case, the 'term operation' can certainly be extended to the persons connected to loading and unloading operation of the goods. That being so, the risk of the deceased can be held certainly covered. Contra arguments of the Insurance Company cannot be accepted. I have gone through the citations placed by the Insurance Company, but in my view, they will not advance its cause in the light of the Hon'ble Apex Court's decision discussed supra.

14) Then quantum of compensation is concerned, it must be said that the same was low. The accident was occurred in the year 2007 and though the deceased was a young and able bodied man of 25 years, the Tribunal fixed his notional income at Rs.1500/- per month, which cannot be accepted.

15) A man of his age and fitness could certainly earn atleast Rs.75/- per day. Thus, his monthly income comes to Rs.2,250/-. Another Rs.750/- can be added towards future prospects making his monthly income at Rs.3000/-. His annual income which will serve the purpose as multiplicand comes to Rs.36,000/- (Rs.3,000/- x 12). The Tribunal rightly took the multiplier as '18'. So, the loss of dependency comes to Rs.4,32,000/-(Rs.36,000 X 18 X 2/3rd). The other heads of compensation are concerned, funeral expenses awarded by the Tribunal being low, the same is enhanced to Rs.10,000/- while approving others. Thus, the total compensation payable to the claimants is as follows:

Loss of dependency	Rs.4,32,000/-
Funeral expenses	Rs. 10,000/-
Loss of Love and affection	Rs. 10,000/-
Loss of estate	Rs. 5,000/-
Transport Charges	Rs. 2,000/-
Total	Rs.4,59,000/-

After deducting 25% towards personal negligence of the deceased, the balance amount comes to Rs.3,44,250/-(Rs.4,59,000/- x 75%).

16) In the result, this MACMA is partly allowed and ordered as follows:

a) Compensation is enhanced to Rs.3,44,250/- with proportionate costs and interest at 7.5% per annum from the date of O.P till the date of realization.

b) Respondents in the O.P are jointly and severally liable to pay the compensation to the claimants and they are directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against them.

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

U.DURGA PRASAD RAO, J

Date: 28.07.2015
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[1] 2014 ACJ 681
[2] 2012 ACJ 2355
[3] 2015(2) ALT 154
[4] 2006 ACJ 671
[5] 2009 ACJ 492
[6] 2014 ACJ 2561
[7] 2014 ACJ 2803
[8] 2004 (5) ALD 30