THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.303 OF 2005

JUDGMENT:

The instant appeal is preferred by the New India Assurance Company Limited, represented by its Divisional Manager, Tadepalligudem, challenging the order and decree, dated 13.07.2004, in O.P.No.310 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, West Godavari District at Eluru (for short, 'the Tribunal'), whereby and whereunder, a sum of Rs.1,50,000/-, as claimed, was awarded as compensation with interest at 9% per annum for the death of one Pasim Satyanarayana, husband of petitioner No.1, father of petitioner Nos.2 and 3 and son of petitioner Nos.4 and 5, under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

2. The appellant – Assurance Company is respondent No.2, whereas respondent Nos.1 to 5, who are the wife, children and parents of the deceased Satyanarayana, are the petitioners and respondent No.6, owner of the offending vehicle, is respondent No.1 in the O.P. before the Tribunal.

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

4. The facts would show that on 22.09.1998, the said Satyanarayana was returning from Chintalapudi on a motorcycle bearing registration No.AP-37-F-3874 belonging to respondent No.1 and when he reached near Fathimapuram at about 07:30 PM, since a cyclist came in the opposite direction, the said Satyanarayana, while attempting to avert taking place of the accident, fell down from the motorcycle and sustained head injury, due to which, he died instantly. Petitioners, claiming that they are the wife, children and parents of the deceased and are entirely dependant on the deceased for their sustenance, laid claim for Rs.1,50,000/- under Section 166 of the Act.

5. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 – Insurer strongly opposed the claim contending that the policy does not cover the risk of the driver or owner of the motorcycle, as the policy was an 'Act' policy issued to respondent No.1 concerning the motorcycle and therefore, sought to dismiss the claim petition against it, as it has no obligation to indemnify respondent No.1.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed the following three issues:

> "1. Whether the deceased died due to rash and negligent driving of his Hero Honda Motor Cycle bearing No.A.P.37-F 3874 by himself?

> 2. Whether the petitioners are entitled for compensation? and if so to what amount and from which of the respondents?
> 3. To what relief?"

7. During enquiry, petitioner No.1 besides examining herself as PW.1 examined one Kotha Venkateswara Rao as PW.2 and marked Exs.A1 to A5 to substantiate the claim laid. On behalf of respondent No.2, Assistant Manager of the local Branch was examined as RW.1 and marked Exs.B1 and B2.

8. The Tribunal, on issue No.1, held that the accident occurred only because the deceased motorcyclist tried to avert the accident when the cyclist came in opposite direction and, accordingly, recorded the finding in favour of the petitioners.

9. On issue No.2, despite referring to the contention of the learned Standing Counsel for the Insurance Company that the policy was an 'Act' policy and does not cover the risk of the owner or driver of the motorcycle and only covers the risk of third party, still, basing on the decisions in **Oriental Insurance Co. Ltd. v. Hulasi Devi and others**[1], **Amrit Lal Sood v. Kaushalya Devi Thapar**[2], **Adbul Jabbar v. Kesar**[3], **Divisional Manager, National Insurance Co. Ltd. v. Jayashree Rath**[4], **Oriental Insurance Co. Ltd. v. Minaxy and**

others[5]**, Kore Laxmi v. M/s. United India Insurance Co. Ltd. and others**[6]**, New India Assurance Co. Ltd. v. Muna Maya Basani and another**[7] **and Krishna Mourya and others v. J.P. Sharma and others**[8] and also certain other decisions, held that the deceased has to be construed as a third party and fastened liability on the Insurance Company by determining the compensation at Rs.1,50,000/-, as claimed by the petitioners.

10. It is the aforesaid order which is under challenge in the instant appeal preferred by the insurer mainly on two grounds. The first is that the deceased himself was responsible for taking place of the accident and therefore, no liability can be fastened on the insurer, and the second, that since the policy was an ‘Act’ policy, it covers only the risk of third parties and it is clearly mentioned in the policy that the risk of the owner or driver of the vehicle is not covered.

11. Heard Sri K. Subba Rao, learned counsel for the appellant. Though respondent Nos.1 and 5 are served, there is no appearance on behalf of them. Respondent Nos.2 and 3 being minors are represented by respondent No.1. Respondent No.4 died during pendency of the appeal and his legal heirs, who are respondent Nos.1 to 3 and 5, are already on record. There is no representation

for respondent No.6, when the matter is called.

12. The controversy can be resolved basing on the nature of the policy issued by respondent No.2 so far as the vehicle involved in the accident is concerned. The policy is marked as Ex.B1. It shows that the policy is an 'Act' policy. While the policy issued is an 'Act' policy, certainly, it covers the risk of third parties, but not either the owner or the person driving the vehicle or the rider. This apart, as seen from the fact situation occurring in the instant case, the accident had occurred on account of the own fault of the deceased. More so, the deceased has not met with the accident by hitting any vehicle coming in opposite direction. Thus, on both the grounds, the Insurance Company cannot be mulcted with any liability. Even the decision relied on by the learned counsel for appellant in **Oriental Insurance Company Limited v. Meena Variyal and others**[9] would support the stand taken by the appellant and in the said decision, it was held thus:

> "26. On the facts of this case, there is no finding that Mahmood Hasan, another employee of the owner was driving the vehicle. Even if he was, there is no finding of his negligence. The victim was the Regional Manger of the Company that owned the car. He was using the car given to him by the Company for use. Whether he is treated as the owner of the vehicle or as an employee, he is not covered by the insurance policy taken in terms of the Act --- without any

> special contract --- since there is no award under the Workmen's Compensation Act that is required to be satisfied by the insurer. In these circumstances, we hold that the appellant Insurance Company is not liable to indemnify the insured and is also not obliged to satisfy the award of the Tribunal/Court and then have recourse to the insured, the owner of the vehicle. The High Court was in error in modifying the award of the Tribunal in that regard."

13. Therefore, the Tribunal went wrong in fastening liability on the insurer overlooking the fact that the accident had occurred due to the own negligence of the deceased and also overlooking the fact that the policy was an 'Act' policy and does not cover the risk of the deceased, as he cannot be construed as a third party. However, so far as the liability of the owner of the motorcycle, who is respondent No.1 in the O.P., is concerned, the same is maintained and the petitioners – claimants are at liberty to recover the entire compensation amount from the owner of the vehicle. In case, the petitioners have withdrawn half of the compensation amount deposited by the insurer pursuant to the order, dated 11.02.2005, in M.A.CMA.MP.No.364 of 2005, it is open for the insurer to recover the same from the owner of the motorcycle. In case, the same is not withdrawn and is still lying to the credit of the O.P., the insurer is at liberty to seek return of the amount.

14. Accordingly, the appeal is allowed. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

A. SHANKAR NARAYANA, J

March 11, 2016.
MD

[1] 2002 ACJ 2082

[2] 1998 ACJ 531 (SC)

[3] 1988 (1) TAC 187 (Rajasthan)

[4] 1999 ACJ 889 (Orissa)

[5] 2000 ACJ 385

[6] 2003 (3) LS 313 (DB)

[7] 2001 ACJ 940

[8] 1998 ACJ 877

[9] 2007 (2) ACJ 1284