HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.2732 of 2011

JUDGMENT:

Aggrieved by the Award dated 01.07.2002 in M.V.O.P.No.497 of 2001 passed by the Chairman, M.A.C.T-cum-District Judge, Cuddapah (for short 'the Tribunal'), R3/United India Insurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that on 11.06.2001 at about 5.30 PM when the deceased—K.Raja Ramana Reddy and others while returning from Mylavaram to Cuddapah after attending tonsure ceremony of his friend in Tata Sumo bearing No.AP 03 E 1719, on the way, the driver of Tata Sumo drove the vehicle at high speed, in a rash and negligent manner and dashed against the opposite coming tipper. In the resultant accident, the deceased and other inmates of Tata Sumo sustained grievous injuries and deceased succumbed to injuries. It is averred that accident was occurred due to rash and negligent driving by the driver of Tata Sumo. On these pleas, the claimants filed M.V.O.P.No.497 of 2001 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2 who are owners of Tata Sumo and Tipper respectively and R3/insurer of the offending vehicles and claimed Rs.10,00,000/- as compensation.

a) R1/owner of Tata Sumo filed written statement contending that there is no rash and negligence on the part of driver of Tata Sumo and the driver had valid and effective driving licence at the time of accident. He also contended as the vehicle was insured with R3/Insurance Company, his liability has to be indemnified by Insurance Company. Finally, he contended that compensation claimed by the claimants is highly excessive and exorbitant.

b) R2/owner of Tipper filed written statement stating that on the date of accident their vehicle was going up-gradient and R1's vehicle was coming down gradient in a rash and negligent manner and hence there is no negligence on the part of tipper driver and Tata Sumo driver was responsible for the accident. He also stated that as the Tipper was insured with R3/Insurance Company and the policy was in force and the driver of the Tata sumo was having valid and effective driving licence as on the date of accident, Insurance Company is liable to pay compensation. He thus prayed to dismiss the OP.

c) R3/Insurance Company filed written statement denying all the material averments made in the claim petition and urged to put the claimants to strict proof. It contended that the deceased and others travelled in the Tata Sumo on hire basis and not in the capacity as friend to R1 and he (R1) has not paid any premium covering their risk and therefore the Insurance Company is not liable to pay any compensation. Finally, it contended that compensation claimed by the claimants is highly excessive and exorbitant and thus prayed to dismiss the OP.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A5 were marked on behalf of claimant. RW1 was examined and Exs.B1 and B2 were marked on behalf of respondents.

a) The lower Tribunal on appreciation of both oral and documentary evidence held that accident was occurred on account of rash and negligent driving of the Tata Sumo driver and awarded Rs.8,10,000/- as compensation against respondents 1 and 3 while exonerating R2/owner of Tipper, with proportionate costs and interest @ 9% p.a. under different heads as below:

Loss of dependency	Rs.	7,68,000-00
Loss of consortium	Rs.	10,000-00
Love and affection	Rs.	30,000-00
Funeral expenses	Rs.	2,000-00

Total Rs. 8,10,000-00

Hence, the appeal by Insurance Company.

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

4) It may be noted that in this appeal this Court pronounced the judgment on 14.11.2011 restricting the liability of the appellant/Insurance Company to Rs.90,000/- and directing the respondents/claimants to recover the balance compensation amount from the owner of the vehicle. However, subsequently a review MACMA MP No.172 of 2012 came to be filed by the claimants seeking review of the order dated 14.11.2011 on the ground that the previous advocate of the claimants has given '*no objection*' and thereafter the present counsel—Sri J.Seshagiri Rao filed Vakalat on the behalf of claimants on 26.04.2011, but unfortunately in the cause list dated 14.11.2011 the name of previous counsel alone was printed and thereby the present counsel could not appear to address the arguments on behalf of claimants and in those circumstances, on hearing the arguments of appellant/Insurance Company the judgment was pronounced on 14.11.2011. The said review petition was allowed on 28.02.2014 and earlier judgment was recalled and appeal was restored to file. That is how the appeal is heard again.

5) Heard arguments of Sri A.Malathi, learned counsel for appellant/Insurance Company and Sri J.Seshagiri Rao, learned counsel for R1 to R4/claimants. Notice sent to R5 not yet returned. Notice sent to R6 unserved. R7 is not necessary vide cause title.

6a) Challenging the award, learned counsel for appellant/Insurance Company firstly argued that Tribunal grossly erred in fastening liability on the Insurance Company holding that Tata Sumo was used for social and domestic purpose but not for hire and hence there was no violation of terms of Ex.B1—policy. She vehemently argued that

R1/owner of Tata Sumo has nothing to do with the inmates of the vehicle which clearly implies that they hired his vehicle for their social purpose. On that ground the Tribunal ought to have held that the terms of the policy were violated and exonerated the Insurance Company. Learned counsel alternatively argued that even assuming that the vehicle was not hired but used for domestic purpose, still the risk of the inmates of the vehicle such as deceased and others was not covered under the terms of Ex.B1—policy to full extent but only to the extent of Rs.90,000/- each to 10 persons. As such the liability if any of Insurance Company in the instant case shall be limited to Rs.90,000/- only and balance shall be payable by the owner. Learned counsel argued in fact in the earlier judgment dated 14.11.2011 this Court appreciated this argument of appellant and restricted the liability of Insurance Company to Rs.90,000/- and directed the claimants to recover the balance compensation from the owner/insured. She thus at the first instance prayed to exonerate the Insurance Company totally from its liability and alternatively to restrict its liability to Rs.90,000/-

b) Secondly, challenging the quantum of compensation, she argued that the Tribunal erred in fixing the monthly income of the deceased at Rs.6,000/- though there was no cogent evidence in that regard and thereby the compensation was drastically escalated. She thus prayed to re-assess the compensation.

7a) In oppugnation, Sri J.Seshagiri Rao, learned counsel for claimants firstly argued that the deceased and other inmates of Tata Sumo were third parties with regard to the crime vehicle since they are not owners of vehicle and as such, their risk is squarely covered under Ex.B1—policy to full extent. He alternatively argued that even assuming that the deceased and other inmates were not third parties but only passengers with reference to the vehicle, still their liability should be covered to full extent for the reason that Ex.B1—policy is a comprehensive policy. He vehemently argued that when the policy is a comprehensive one, the question of non-coverage or limited coverage to the extent of Rs.90,000/- alone to the risk of deceased and other inmates does not arise. He submitted that comprehensive policy of a private car should cover the liability of inmates to the full extent. To buttress his argument, he relied upon the decision of the Supreme Court reported in ***National Insurance Company Limited v. Balakrishnan and another***[1].

b) Nextly, he argued that compensation awarded under different heads was just and reasonable and there was no need to review the same.

8) In the light of above rival arguments, the points for determination in this appeal are:

1. Whether the Tribunal was right in fastening liability on appellant/Insurance Company and if so, whether its liability holds to full extent or restricted to Rs.90,000/- of the total compensation?

2. Whether the compensation awarded by the Tribunal is just and reasonable or needs reconsideration?

3. To what relief?"

9) **POINT No.1**: The main plank of argument on which the Insurance Company repudiates its liability was that vehicle was hired contravening the terms of policy stipulating its use for social and domestic purposes. In that context, a perusal of Ex.B1 shows that the vehicle was insured restricting its use only for social, domestic or pleasure purposes and for the own business of the insured and not for hire or reward. Hence, the question is whether the vehicle was used for hire or reward in contravention of the terms of Ex.B1 as contended by appellant. In the claim petition, the claimants have clearly pleaded that the deceased and others went to Mylavaram to attend the tonsure ceremony of their friend in the 1st respondent's Tata Sumo and the 1st respondent is their friend and therefore, he provided his vehicle with free of cost as a

social trip. So, it is their specific case that vehicle was accommodated by 1st respondent for social purpose but not for hire. The 1st respondent though filed counter did not specifically dispute this fact in his counter.

a) PW1 who was one of the inmates of jeep, deposed that 1st respondent is their friend and one Rahamathulla who also travelled along with them, brought the jeep from 1st respondent on friendly basis and they did not pay any amount to 1st respondent. He denied the suggestion that they engaged the jeep for hire from 1st respondent.

So, the pleadings and evidence in this case clearly manifest that vehicle was used for private purpose and not for hire or reward. Though the Insurance Company vehemently contended in other way, it could not establish that the vehicle was hired and thereby the terms of policy were violated. So, the Tribunal rightly held that there was no violation of terms of policy.

9) Now, the next point is whether the policy covers the risk of inmates of Tata Sumo. In this context, the argument on behalf of Insurance Company is that policy covers the risk of 10 inmates only to the extent of Rs.90,000/- each but nothing more. Whereas the argument on behalf of claimants is that the deceased and other inmates were third parties with reference to the crime vehicle and hence their liability covers to the full extent. Alternatively, even if they were not third parties but only inmates of the vehicle, still the policy covers their risk to the full extent for the reason that the policy was a comprehensive policy. So, in the above context, the first point is whether the deceased and other inmates of the vehicle can be referred as *third parties*. In my view, merely because the deceased is not owner of the goods, he cannot automatically fit into slot as '*third party*' but he is a passenger in the vehicle. A '*third party'* is a person who is no way connected with the vehicle. However, the deceased travelled in the capacity of a

passenger. In ***United India Insurance Company Limited v. C.Goverdhan and another***[2] it was held thus:

> *"Para 8: In fact, in insurance parlance 'third party' means a person who is not using the vehicle involved in the accident. A passenger travelling in a vehicle will not be a 'third party' for the purpose of insurance and so the Act policy does not cover the risk of the passengers travelling in the vehicle."*

In the same lines, a Division Bench of this Court in ***Oriental Insurance Co. Ltd. v. B.R.Peddi Reddy Lakshmi Devi***[3] held thus:

> *"17. From the language of Section 147 of the Act, it can be understood that the intention of the Legislature is only to cover the risk of third parties under the Act. The expression 'any person' used in Section 147 does not include the owner of the vehicle or a gratuitous passenger. It is not the mandate of Section 147 that the Act policy shall include the risk of the owner or any other persons who are being carried in the vehicle with the permission of the owner.*
>
> *18. However, the insurance company may enter into a contract with the insured even to cover the risk of the owner or driver of the vehicle or the inmates of the car by collecting the additional premium from the owner for the said purpose, thereby widening the scope of statutory contract in such an event if the owner pays extra premium to cover any such risk, the insurance company is liable to indemnify the owner to the said extent. But, it is strictly in accordance with the terms of contract entered into between the insured and the insurer. It is not even obligatory on the part of the owner of the vehicle to get the vehicle insured at least under an Act policy.*
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> *19. It is therefore, obvious that even if the policy is Act only policy, it does not cover the risk of the owner, driver or any other inmates of the car. However, to cover the risk of any such persons, the owner and the insurance company are not prohibited to extend the terms of contract when the owner of the vehicle pays extra premium to cover such risk. Therefore, unless and until the liability arises either under Section 147 of the Act or under the terms of contract of insurance, the risk of the owner or any gratuitous passenger traveling in the vehicle of the owner is not covered merely because it is an Act policy."*

Thus, the Division Bench clearly held that the Act Policy will only cover the risk of third party and not the risk of owner, driver or any other inmates of a car but their risk can be made covered under the policy by paying additional premium. This decision clearly infers that inmate of a car will not come under the purview of '*third party*'. Had he been regarded as third party, his risk would have been covered without the necessity of paying additional premium.

So, from the above decisions of this Court, it is clear that an inmate in a private car cannot be treated as third party. Hence, it has now to be seen whether the policy covers the risk of the deceased as a passenger instead of a third party.

10) A perusal of Ex.B1—policy also shows that it is a **B** policy i.e. comprehensive policy. Then, in the schedule of premium it is mentioned as follows:

> *"No. of persons—10 capital benefits*
> *per person Rs.90,000/-* *Rs.450.00*
> *Addl. Prop. Prem. Endt-70* ***(Unlimited*** *)* *Rs. 50.00"*

Thus, Ex.B1 shows that additional premium of Rs.450/- was paid by R1 to give coverage to '10' passengers at the rate of Rs.90,000/- each. To this extent the submission of learned counsel for appellant is correct. Therefore, basing on this submission, earlier it appears that a learned single Judge of this Court restricted the liability of Insurance Company to Rs.90,000/-. However, a careful perusal of schedule of premium shows that there is no need to restrict the liability of Insurance Company to Rs.90,000/- in my view. The reason is that R1 paid additional proportionate premium of Rs.50/- to give '*unlimited*' coverage to the passengers. This payment was not brought to the notice of this Court earlier. Therefore, as rightly contended by learned counsel for claimants, the policy being a comprehensive policy and premium was paid to give coverage to 10 persons to an unlimited extent, the Insurance Company cannot repudiate its liability.

11) In ***Balakrishnan***'s case (1 supra) the Apex Court basing on the Circulars issued by the Insurance Regulatory and Development authority (IRDA) held thus:

"Para-26 In view of the aforesaid factual position, there is no scintilla of doubt that a

"comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of ***Bhagyalakshmi*** *(supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same."*

In the light of above judgment also the Insurance Company is liable to pay compensation to full extent. This point is accordingly answered against the appellant/Insurance Company.

12) **<u>POINT No.2</u>**: With regard to this point, the Tribunal considering the evidence of PWs.2 and 3 observed that deceased was running cool drink shop near Apsara theatre, Cuddapah and accordingly fixed his income at a moderate rate of Rs.6,000/- per month and deducting 1/3rd from his gross income and by applying '16' as multiplier since the deceased was 33 years old, arrived loss of dependency at Rs.7,68,000/-. Further, the Tribunal awarded Rs.10,000/- each towards loss of consortium and loss of love and affection to R2 to R4 and a sum of Rs.2,000/- towards funeral expenses making the total compensation as Rs.8,10,000/-. On a careful perusal of the facts and evidence, I do not find any exorbitance in the compensation awarded by the lower Tribunal. This point is answered accordingly.

13) **<u>POINT No.3</u>**: In view of the findings on point Nos.1 and 2, the appeal preferred by the Insurance Company is dismissed and ordered as follows:

(i) Respondent Nos.1 and 3 in OP are directed to deposit the compensation amount within two (2) months from the date of this judgment, failing which execution can be taken out against them.

(ii) No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 09.06.2016
Murthy

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[1] (2013) 1 SCC 731

[2] 2007 (5) ALT 344

[3] 2011 (1) ALD 686 (DB)