HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.4268 OF 2004

JUDGMENT:

The present appeal is preferred by respondent No.3 - M/s. Oriental Insurance Company Limited in M.V.O.P. No.267 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge, Kakinada (for short 'Tribunal') under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act'), challenging the order, dated 02.08.2004, passed by the Tribunal in the aforesaid MVOP, whereby and where-under, the Tribunal awarded a sum of Rs.1,28,000/- as compensation with interest at 9% per annum thereon from the date of petition till realization to petitioner Nos.1 and 2 in the claim petition for the death of Kattanuri Krishnaveni, mulcting joint and several liability on respondent Nos.1 to 3, who are driver, owner and insurer of the accident vehicle, respectively.

2. Respondent No.3, who is appellant herein, preferred the present appeal on the main ground that the policy does not reflect the risk of inmates of private car when the policy itself was an 'Act' policy, but the Tribunal completely ignored the same and fastened liability on it.

3. Respondent Nos.3, 4 and the appellant herein, who are driver, owner and insurer of Ambassador Car bearing registration

No.AP 03 1661, are respondent Nos.1 to 3, respectively, in the aforesaid M.V.O.P., while respondent Nos.1 and 2 are the petitioners.

4. For the sake of convenience, the parties hereinafter referred to as they were originally arrayed in the aforesaid MVOP.

5. The facts in brief are that on 27.06.2001, deceased - K. Krishnaveni along with her relatives have engaged an Ambassador Car bearing registration No.AP 03 1661 at Rajahmundry to go to Triupati; herself and other relatives boarded the car to go to Tirupati, and when it reached near Reddy Brewery Factory, Singarayakonda at about 1.30 a.m. on 28.06.2001, respondent No.1 since driven it in a rash and negligent manner, hit a stationed oil tanker, due to which, death of the said K. Krishnaveni had occurred; a crime was also registered by the concerned police; petitioner No.1 is her husband and petitioner No.2 is her son; that the deceased was 45 years old and house-wife according to the petitioner; and hence, laid the claim seeking to grant a sum of Rs.2,40,000/- as compensation against respondent Nos.1 to 3 being driver, owner and insurer of the aforesaid car.

6. Respondent Nos.1 and 2 remained *ex parte* before the Tribunal.

7. Respondent No.3 alone resisted the claim by raising various grounds including the ground that the driver was not possessing

a valid and subsisting driving license to be held by the driver of the car and sought to dismiss the claim, reserving its right under Section 170 of the Act to question the compensation in case the owner remains *ex parte.*

8. The Tribunal framed the following three issues:

1. Whether the accident had occurred due to the rash and negligent driving by driver of Car AP 03 1661?
2. Whether the petitioners are entitled to the compensation amount, and if so, to what amount and from which of the respondents?
3. To what relief?

9. On behalf of the petitioner, petitioner No.1 was examined as PW.1 and Exs.A-1 to A-3 were marked. On behalf of respondent No.3, RW.1 was examined and Exs.B-1 and B-2 were marked.

10. The Tribunal having determined the compensation at Rs.1,28,000/-, which of course, not the question in the present appeal, the real controversy herein is only the liability mulcted on the insurer, in paragraph No.15, the Tribunal discussed the liability of respondent No.3 in MVOP to pay the amount which reads thus:

> "15. A careful perusal of the testimony of R.W.1 reveals that the policy was in force as on the date of accident. The crucial question that falls for consideration is, whether the 2^{nd} respondent has violated the terms and conditions of policy. As per the testimony of R.W.1 Ex.B-1 is act policy, therefore, occupants of the car are not entitled for compensation. The Motor Vehicles Act is a

piece of social legislation. The Tribunal has to interpret the provisions in such a manner for the benefit of the victims of the road accidents and not against them. Except the insurer and insured all other persons comes within the definition of the 3rd party. Even as per the terms and conditions of the act policy the third parties are entitled to claim compensation from the insurance Company. The learned counsel for the petitioners strenuously submitted that even if the owner of the vehicle has violated the terms and conditions of policy still the Insurance Company is liable to pay compensation to the 3rd party. To substantiate the same he has drawn my attention to the following decision:

> UNITED INDIA INSURANCE CO. LTD., vs. GORLA SHANKAR & OTHERS reported in 2003 (1) L.S. 260.

As per the ratio of the case cited supra, even if there is any violation of terms and conditions of the policy, the Insurance Company is bound to pay compensation to the third parties. The only remedy available to the Insurance Company is to recover the same from the insured. In view of the facts and circumstances of the case, and also the ratio of the case cited supra, I am of the humble view that the 3rd respondent has to indemnify the liability of 2nd respondent. Therefore, the respondents 1 to 3are jointly and severally liable to pay compensation to the petitioners."

11. Heard Sri A.V.K.S. Prasad, learned standing counsel for the appellant - insurer, and Sri Jyosula Bhaskara Rao, learned counsel for respondent Nos.1 and 2. Despite service of notice on respondent Nos.3 and 4, none appears.

12. Sri A.V.K.S. Prasad, learned standing counsel for the appellant - insurer would contend that the policy marked as Ex.B-1 would make it abundantly clear that it is only an ‘Act Policy’ and vehicle is a private car. Even the contents of policy would show that no premium was paid for passengers in the car or any additional premium was paid. Therefore, the Tribunal ought not to have fastened liability on the Insurer.

13. Per contra, Sri Josyula Bhaskara Rao, learned counsel for respondent Nos.1 and 2 - petitioners would contend that the Tribunal did not go wrong and, in fact, the passengers in the car are to be treated as third parties, and since there is valid insurance coverage, the order does not warrant interference.

14. Now, a short question that arises for consideration is:

> Whether the policy is private car ‘Act Policy’, and whether any additional premium is paid to cover the risk of inmates even by owner of the vehicle so as to bind the insurer to indemnify the owner in case accident takes places and inmates suffer injuries or death?

15. The learned Tribunal while fixing liability on the insurer has assigned certain reasons in paragraph No.15. Substantially, what has been observed by the learned Tribunal was that the provisions of the Motor Vehicles Act are intended for the benefit of the victims of road accident and not against them; except the insurer and the insured, all other persons come within the definition of third party; even as per

the terms and conditions of the Act policy, third parties are entitled to claim compensation from the insurer; learned counsel for the claimants strenuously submitted that even if the owner of the vehicle has violated terms and conditions of the insurance policy, still, the insurer is liable to compensate the third party and substantiating the same, reliance was placed on the decision in **United India Insurance Company Limited v. Gorla Shankar** (2003 (1) L.S. 260). Thus, observing so, the Tribunal fastened liability on the insurer to pay the amount determined by it towards compensation.

16. A perusal of the insurance policy under Ex.B-1 would show that it was a "Private Car Act Policy" and admittedly, the car, in which the deceased along with his relations was travelling, was not a 'taxi' and it was a private car. Even the insurance policy does not reflect any additional premium at all was paid to cover the risk of the inmates of the car. Therefore, it has to be held that the Tribunal, somehow, overlooked the said vital aspect and carried away by the object of the legislation and rendered the order under challenge mulcting liability on the insurer. When the contract under the policy between the insured and the insurer does not cover the risk of the inmates of the car, certainly, the Tribunal was not right in holding that since the legislation is a beneficial legislation, and make an observation that except insurer and the insured, all other persons come within the definition of third party.

17. Thus, the order and decree under challenge is legally infirm and liable to be set aside and, therefore, the same is set aside exonerating the liability of the insurer to pay compensation.

18. As seen from the docket proceedings, this Court by the order in C.M.A. M.P. No.15498 of 2004, dated 11.11.2004, while directing the insurer to deposit half of the awarded amount along with proportionate costs and interest, permitted the claimants to withdraw the same without furnishing any security. Therefore, it is desirable to direct the insurer to recover the amount withdrawn by the claimants from the insured. It is also open to the claimants to recover the balance compensation from the insured.

19. Thus, while allowing the appeal exonerating the insurer from its liability to pay compensation to the claimants, the order and decree under challenge is confirmed in all other respects. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand closed.

A. SHANKAR NARAYANA, J

August 21, 2017.
Mgr/PV