THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.NO.1116 OF 2010

JUDGMENT:

This appeal is arising out of judgment and decree, dated 30.04.2010 passed in O.P.No.569 of 2007 by the Chairman, Motor Accident Claims Tribunal-cum-I Addl. District Judge, Adilabad.

2. The petitioner filed the claim petition under Sections 166 and 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') against the 1st respondent-owner and 2nd respondent-insurer, claiming compensation of Rs.3,00,000/- for the injuries sustained by her in the motor vehicle accident.

3. The brief facts of the case are that on 18.03.2007 while the petitioner was proceeding along with others in a jeep bearing No.AP01V-623 to Khanapur from Nirmal, the driver of the jeep driven the vehicle in a rash and negligent manner and lost control over it, resulting in the jeep turned turtle on the side of the road. The occupants of the jeep including the petitioner sustained injuries in the accident. The petitioner received a fracture to her left side of upper thigh, hip joint and grievous injuries to skull, both legs and other parts of the body. She was shifted to Government Hospital, Nirmal and from there, she was referred to Nizamabad private hospital, where she underwent a operation and steel rods were inserted and she had taken treatment for a period of one month by incurring an expenditure of Rs.1,00,000/-. The police registered a case in Cr.No.20 of 2017 against the driver of the jeep and filed charge sheet against him. The petitioner was working as a private teacher and earning Rs.3,000/- per month. She was

unable to attend the school for a period of six months due to the injuries suffered by her.

4. The 1st respondent-owner of the jeep filed counter stating that the claim of the petitioner is highly excessive and sought for dismissal of the claim petition.

5. The 2nd respondent-insurer filed counter contending that the petitioner traveled in the jeep as a gratuitous passenger and as such, she is not entitled to claim any compensation. It is further averred that the policy does not cover the liability of any passenger as the policy was only for covering third party risk. The owner of the vehicle has not paid specific premium covering the risk of any passenger and therefore, the Insurance Company is not liable to pay any compensation. It is further averred that the claim of the petitioner is highly excessive and exorbitant and the driver of the crime vehicle is not having any valid driving licence at the time of the accident.

6. The Tribunal on consideration of the pleadings of the parties and the evidence of the witnesses, P.W.1-claimant and P.W.2-medical officer and the documents Exs.A1 to A14 and on consideration of the evidence of R.Ws. 1 and 2 and the documents Exs.B1 to B3 has held that the 1st respondent is liable to pay compensation of Rs.1,23,531/- with interest at 7.5% p.a.,

7. Aggrieved by the order of the Tribunal fixing the liability only against the owner of the vehicle and also for enhancement of compensation, the appellant-petitioner preferred the present appeal.

8. Heard the arguments of the learned counsel for the appellant. There is no representation on behalf of the respondents.

9. Learned counsel for the appellant submits that the findings of the Tribunal exonerating the liability on the 2nd respondent-insurer are not in accordance with law. The petitioner travelled in a private car as a third party. There is a coverage of insurance for third party. Therefore, the liability of the insurer cannot be exonerated in case of the petitioner.

10. It is pertinent to note the findings of the Tribunal in para 19 of the judgment, which reads as follows:

> " In support of the contention of the Insurance company, R.Ws. 1 and 2 are examined and marked Exs.B1 to B3. R.W.1 is the employee of the Insurance Company. Ex.B1 policy reads that the vehicle of the first respondent was insured in between 23.05.2006 and 22.05.2007. The date of accident was on 18.03.2007 within the validity period of the policy. Ex.B1 further reds that it was issued as a private car policy-cum-zone-B. The capacity of the vehicle was shown as 9+1. From the evidence of P.W.1 and R.W.1 it is established that the vehicle was used as a passenger vehicle at the time of accident. Therefore, on the face of it, it is to be stated that the vehicle though was insured as a private car liability, it was used as a passenger vehicle. The premium paid is under basic T.P. cover. No extra premium was paid covering the other persons in a private car. Admittedly P.W.1 is a passenger in the vehicle. Therefore, it is to be seen whether the insurance company is to be held liable to pay compensation or whether P.W.1 is to be treated as a third party as contended on behalf of the first respondent."

11. It is obvious from the findings of the Tribunal that the appellant-petitioner travelled in a private car and Ex.B1 is the insurance policy, which is valid between 23.05.2006 and 22.05.2007, whereas the accident occurred on 18.03.207. Therefore, there is valid coverage of insurance as on the date of the accident. As per the evidence of P.W.1 and R.W.1, the vehicle was used as a passenger vehicle at

the time of the accident. The Tribunal has clearly observed that no extra premium has been paid to cover the risk of the persons travelled in a private car. The Tribunal placing reliance in case of *Branch Manager, United India Insurance Company Ltd., v Kondakotla Saroja, w/o late Kondakotla Rajamouli*, (ALT 5 (2008) 246) , held that no extra premium was paid for the passenger who travelled in the insured vehicle, the Insurance Company cannot be held liable.

12. The Tribunal also placed reliance in case of *Jayavarapu Ramesh Babu and another Vs Jayavarapu Laxminarayana and others* (2009 (3) ALT 180) held that if no extra premium was collected for the passengers, the Insurance Company cannot be held liable.

13. The Tribunal has given clear and categorical findings on consideration of evidence that the vehicle involved in the accident is a passenger vehicle and not a goods vehicle. It was further observed that the evidence of R.W.2 and Exs.B2 and B3 would go to show that the driver was possessing non transporting licence by the date of accident and subsequent to the accident, it was converted to transporting licence. On the point that the driver of the crime vehicle was not possessing a valid driving licence by the date of accident as the driver was holding a non transporting licence by the date of the accident, whereas the vehicle involved in the accident is a transporting vehicle, the Tribunal came to the conclusion that the Insurance Company is not liable to pay any compensation in this case and exonerated the liability of the insurer. The Tribunal also held that the vehicle was used as a passenger vehicle and in the absence of any payment of extra premium covering the risk of P.W.1, the insurance company cannot be held liable to pay compensation. It also observed that as P.W.1 cannot

be treated as a third party, insurance company is not liable to pay compensation. The Tribunal on consideration of evidence has arrived at a conclusion that as the driver of the crime vehicle was not possessing valid driving licence by the date of the accident, the Insurance company is not liable to pay compensation. It also observed that the petitioner travelled in the crime vehicle, which is a private car, a passenger vehicle and therefore, he cannot be treated as third party to cover his risk. It also observed that owner of the vehicle has not paid any extra premium for coverage of the risk of the passenger in a private car and therefore, the insurance company is not liable to pay compensation.

14. In a decision reported in **S.Iyyapan v. United India Insurance Co. Ltd.[1],** where the driver of the crime vehicle is possessing a driving licence to drive light motor vehicle and drives a transport vehicle, the insurer is liable to pay the compensation at the first instance and recover the same from the owner of the crime vehicle.

15. In another decision reported in **Manager, National Insurance Co. Ltd. v. Saju P.Paul [2],** it was held as follows:

> "**26.** The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in *National Insurance Co. Ltd. v. Baljit Kaur* {(2004) 2 SCC 1} and *National Insurance Co. Ltd. v. Challa Upendra Rao* {(2004) 8 SCC 517} should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, claimant was 28 years' old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The insurance company has already deposited the entire awarded amount pursuant to the order of this Court passed on 01.08.2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent No. 1) may be allowed to withdraw

[1] (2013) 7 SCC 62
[2] (2013) 2 SCC 41

> the amount deposited by the insurance company before this Court along-with accrued interest. The insurance company (appellant) thereafter may recover the amount so paid from the owner (Respondent No. 2 herein). The recovery of the amount by the insurance company from the owner shall be made by following the procedure as laid down by this Court in the case of *Challa Upendra Rao"*.

16. In another common judgment in Civil Appeal No.3047 of 2017 and 3065 of 2017, dated 21.02.2017, the Hon'ble Apex Court held as follows:

> "18. The facts of the case at hand are somewhat identical to the facts of the case mentioned supra because here also we find that the deceased were found travelling as "gratuitous passenger" in the offending vehicle and it was for this reason, the insurance companies were exonerated. In **Saju P.Paul's case** (supra) also having held that the victim was "gratuitous passenger", this Court issued directions against the Insurer of the offending vehicle to first satisfy the awarded sum and then to recover the same from the Insured in the same proceedings."

17. In view of ratio laid down in the above decisions, the insurer has to pay compensation in the first instance and recover the same from the owner of the vehicle.

18. Learned counsel for the appellant contended that the compensation awarded by the Tribunal is inadequate and therefore, it requires to be enhanced to Rs.15,000/-. On consideration of the evidence, compensation for two grievous injuries awarded by the Tribunal is enhanced to Rs.40,000/- as adequate compensation. The rest of the findings of the Tribunal in regard to awarding compensation does not require any interference of this Court.

19. In the light of the above facts and circumstances of the case, the appeal is liable to be allowed in part enhancing the compensation awarded by the Tribunal from Rs.1,23,531/- to Rs.1,48,531/- and directing the Insurance Company to pay and recover.

20. In the result, the appeal is partly allowed, enhancing the compensation from Rs.1,23,531/- to Rs.1,48,531/- with proportionate costs and interest at 7.5% p.a., and directing the 2nd respondent-insurer to pay compensation to the appellant at first and recover the same from the 1st respondent-owner of the vehicle by following the guidelines in the judgments in National Insurance Company vs. Chella Bharatamma (AIR 2004 SC 4882) and Oriental Insurance Co. Ltd. v. Nanjappan ((2004) 13 SCC 224). Miscellaneous petitions, if any pending in this appeal shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 15TH DAY OF SEPTEMBER, 2017.
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