HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.906 of 2012

JUDGMENT:

Dissatisfied with the Award dt:16.11.2009 in OP.No.99 of 2006 passed by the Chairman, M.A.C.T-cum-III Additional District Judge (Fast Track Court), Mahabubnagar at Gadwal (for short 'the Tribunal'), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The claimants 1 and 2 are the parents of deceased—M.Sivanand. Their case is that on 31.12.2005 at about 3.30 PM, the deceased along with his friends went to Wanaparthy in a Tata Sumo bearing No.AP 09 M 9848 to attend birthday party of his friend and while returning when they reached Annasagar limits on NH7, the driver of Tata Sumo drove the vehicle in a rash and negligent manner at high speed and the vehicle turned turtle and inmates of the Tata Sumo sustained multiple injuries including the deceased and the deceased succumbed to injuries. It is averred that the accident was occurred due to rash and negligent driving by the driver of the Tata Sumo. On these pleas, the claimants filed O.P.No.99 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2 who are owner and insurer of the offending Tata Sumo van and claimed Rs.3,00,000/- as compensation.

b) R1/owner of the vehicle in his written statement while denying all the material averments in the claim petition and urged to put the claimants to strict proof thereof. He contended that offending vehicle was insured with R2/Insurance Company and compensation if any awarded by the Tribunal is to be paid by the Insurance Company. He finally contends that the compensation claimed is excessive and exorbitant.

c) R2/Insurance Company denying claimants' material averments contended that accident was not occurred due to rash and negligent driving by the driver of Tata Sumo. It further contended that deceased travelled in the vehicle as gratuitous passenger and R1 used the vehicle against the terms and conditions of policy and therefore, it is not liable to pay any compensation. Finally, it contended that the compensation claimed is excessive and exorbitant and thus prayed to dismiss the O.P

d) During trial, PW.1 was examined and Exs.A1 to A10 were marked on behalf of claimants. RW1 was examined and Ex.B1—policy copy was marked on behalf of respondents.

e) The lower Tribunal on appraisal of evidence held that accident was occurred on account of rash and negligent driving of the driver and awarded Rs.1,84,000/- as compensation against respondent No.1/owner while exempting R2/Insurance Company, with proportionate costs and interest @ 7.5% p.a. under different heads as below:

Loss of dependency	Rs. 1,70,000-00
Pain and suffering	Rs. 10,000-00
Transportation charges	Rs. 2,000-00

Funeral charges	Rs.	2,000-00
	Total	Rs. 1,84,000-00

Hence, the appeal by the claimants.

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

4) Heard arguments of Sri Bajaranj Singh Thakur, learned counsel for appellants/claimants, Sri V.Venkata Rami Reddy, learned counsel for R2/Insurance Company. Notice sent to R1/owner was served but there is no representation on his behalf. Hence treated as heard.

5a) Learned counsel for appellants/claimants mainly urged two grounds. Firstly, he argued that Tribunal grossly erred in fastening liability on the insured alone exempting the Insurance Company on the ground that the policy was an Act Policy covering the risk of third parties alone and the deceased being the passenger in the vehicle was not a third party and no extra premium was paid to give coverage to his risk. He vehemently argued that the deceased was not owner of the vehicle and hence, he can be accepted as third party in which case the policy will invariably cover his risk. He sought to buttress his argument on the strength of following judgments:

1. ***United India Insurance Company Limited v. Ahmadi Begum*** [1]
2. ***National Insurance Company Limited v.***

***Balakrishnan*[2]**

On this main plank of argument, he sought to fasten the liability on the Insurance Company also.

b) Secondly, he argued that compensation awarded was grossly inadequate inasmuch as lower Tribunal erred in treating the deceased as a non-earning member and fixed his notional income at Rs.15,000/-. He argued that deceased was studying B.Com. by the time of his death and had good potentiality to earn decent income and hence the Tribunal ought to have taken his income on a higher pedestal. He thus prayed to allow the appeal.

6) Per contra, learned counsel for R2/Insurance Company while supporting the award argued that the risk of inmate of a private car like the deceased would not cover under the Act Policy and he cannot be treated as '*third party*' to claim compensation. On that aspect he relied upon the following judgments.

1. ***Oriental Insurance Co. Ltd. v. B.R.Peddi Reddy Lakshmi Devi*[3]**

***2. New India Assurance Co. Ltd. V. Sadanand Mukhi*[4]**

Nextly, he argued that compensation awarded was just and reasonable and therefore there is no need to interfere.

7) In the light of above rival arguments, the points for determination are:

1. *Whether the Tribunal was right in exonerating the Insurance Company from the liability?*

2. *Whether the compensation awarded was just and reasonable or needs interference?*

3. *To what relief?*

8) **<u>POINT No.1</u>**: The admitted facts are that the deceased travelled in a Tata Sumo bearing No.AP 09 M 9848 and met with an accident when it turned turtle and died. The vehicle is a private vehicle owned by the 1st respondent. Ex.B1—policy shows that the vehicle was insured as a private car under "Act only Policy". The schedule of the premium shows that premium was paid to extend the coverage to third party, third party property damage and one workman. So, it is obvious that no additional premium was paid to extend the coverage of policy to the inmates of the vehicle. Be that as it may, the contention of learned counsel for appellants/claimants is that the deceased can be treated as third party as he was not owner of the vehicle and not connected with the vehicle and since the policy covers the risk of third parties, Insurance Company can be made liable. This argument cannot be appreciated. The deceased travelled in the vehicle as a passenger and therefore, he cannot be treated as a third party. A '*third party*' is a person who is no way concerned with the vehicle. In the judgment relied upon by the Tribunal reported in ***United India Insurance Company Limited v. C.Goverdhan and another***[5] this fact was clearly mentioned. It was held thus:

"<u>Para 8:</u> 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."

Basing on the above judgment, the Tribunal exonerated the Insurance Company.

9) In this appeal, learned counsel for appellants relied upon ***Ahmadi Begum***'s case (1 supra) to contend that if a private vehicle is allowed to carry persons other than owner or a driver, as per certificate of registration all such persons come within the expression of *third party*. In that case learned single Judge relying upon the judgment of anther learned single Judge reported in ***New India Assurance Company Limited v. Palamoni Suresh***[6] held so. The judgment in ***C.Goverdhan***'s case (5 supra) relied upon by the lower Tribunal is also that of a learned single Judge of the High Court which gave different expression to the word '*third party*' and held that a passenger travelling in a vehicle will not be a '*third party*' for the purpose of insurance. From among the divergent expressions, in my considered view, the expression in ***C.Goverdhan***'s case (5 supra) can be accepted in view of the decision of Division Bench of this Court in ***B.R.Peddi Reddy Lakshmi Devi***'s case (3 supra) cited by respondent wherein it was 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.

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. Thus, the decision of the Division Bench clearly infers that inmate of a car will not come under the purview of '*third party*'. In view of decision of the Division Bench, the decision in ***Ahmadi Begum'***s case (1 supra) cited by the appellants cannot be accepted. The decision in ***Balakrishnan***'s case (2 supra) cited by the appellants also will not come to their rescue. The said decision was cited by the appellants basing on the circulars issued by Insurance Regulatory and Development Authority (IRDA) which were discussed in that decision. The Apex Court has given clarification about the applicability of those circulars as follows:

> *"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 (Emphasis supplied).. 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."*

Thus, from the above, it is clear that Comprehensive/Package Policy will cover the liability of the occupant in a car is of no avail to the appellants because in the instant case, the policy is an Act Policy and the Act Policy was held in the above decision stand on a different footing from a Comprehensive/Package Policy. In view of the above legal position, the lower Tribunal was right in exonerating the Insurance Company from liability. Point No.1 is answered accordingly.

10) **POINT No.2**: This point is concerned, I find force in the submission of appellants. Ex.A7 shows that deceased was studying B.Com. 2nd year in Gouthami Degree College, Mahabubnagar by the time of accident. In that view, there was a scope for his earning more than Rs.15,000/- per year as notionally fixed by the lower Tribunal. Having regard to the fact that deceased died in the year 2005, it can be said, by the time he would have earned atleast Rs.2,000/- per month. To this amount, 50% can be added towards future prospects in which case his monthly income comes to Rs.3,000/- (Rs.2,000/- plus 1,000). Hence his annual income which will serve the purpose as multiplicand comes to Rs.36,000/- (Rs.3,000/- x 12). Since the deceased is a bachelor, as per the decision of the Apex Court in ***Sarla Verma v. Delhi Transport Corporation***[7]***,*** 50% is to be deducted towards his personal and living expenditure. His net annual contribution to his family comes to Rs.18,000/-. Considering his age as 21 years, '17' is taken as multiplier. Then, the loss of dependency comes to Rs.**3,06,000**/- (Rs. 18,000/- x 17). Thus, the total compensation payable to the claimants under different heads is as follows:

Loss of dependency	Rs. 3,06,000-00
Pain and suffering	Rs. 10,000-00
Transportation charges	Rs. 2,000-00

Funeral charges		Rs. 2,000-00
	Total	Rs. 3,20,000-00

a) It may be noted that the above compensation exceeds the claim of claimants. However, in view of the decision of the Apex Court in ***Nagappa vs. Gurudayal Singh***[8] the Court has power to grant more amount than claimed in suitable cases by directing the parties to remit additional Court Fee. Thus, the compensation is enhanced by Rs.**1,36,000**/-. (Rs.3,20,000/-m minus Rs. 1,84,000/-)

11) **<u>POINT No.3</u>**: In the result, this appeal filed by the appellants is partly allowed and ordered as follows:

(i) The compensation is enhanced by **Rs.1,36,000/-**(Rs.3,20,000/- minus Rs.1,84,000/-) with proportionate costs and interest @ 7.5% per annum from the date of OP till the date of realization.

(ii) Respondent No.1 in OP is directed to deposit the compensation amount within two (2) months from the date of this judgment, failing which execution can be taken out against him.

(iii) The appellants/claimants are directed to pay the additional Court Fee on Rs.20,000/-(Rs.3,20,000/- minus Rs.3,00,000/-) within one (1) month from the date of this judgment.

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

U. DURGA PRASAD RAO, J

Date: 03.06.2016

Murthy

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[1] 2011 ACJ 2638 (AP)

[2] (2013) 1 SCC 731

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

[4] 2009 (II) ACC 432 (SC)

[5] 2007 (5) ALT 344

[6] 2011 ACJ 2345 (AP)

[7] 2009 ACJ 1298 (SC)

[8] 2003 ACJ 12 (SC) (FB)