HONOURABLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.197 of 2006

JUDGMENT:

This appeal is filed by the appellant-Insurance Company aggrieved by order, dated 20.03.2003, in OP No.303 of 2000 on the file of the Chairman – cum – District Judge, Adilabad, granting compensation of Rs.3,60,000/- in favour of the 1st respondent –claimant and directing the respondents in the claim petition to pay the said amount with interest at 9% per annum from the date of petition till realization jointly and severally.

2. The appellant – United India Insurance Company Limited is respondent No.3 in the O.P., while respondent No.1 is the petitioner, respondent No.2, who is the driver, and respondent No.3, who is the owner of the crime vehicle, are respondents 1 and 2 in the O.P.

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 of the case are that on 11.11.1999 the petitioner-claimant was waiting at Srirampur bus stand to go to Indaram Village along with goods at night. He found the lorry of the 2nd respondent bearing No.AP 9V 3060, insured with the 3rd respondent, driven by the 1st respondent and then petitioner loaded his goods in the lorry and when he was intending to step into the cabin of the lorry, the driver suddenly drove the lorry in a rash and negligent manner with high speed, and due to the sudden rash and negligent act of the driver, the petitioner had slipped from the lorry, fell down and the front tyre of the lorry ran over his left leg, which resulted in fracture of foot and crush injury and other injuries and his left leg was amputated. The petitioner

further contended that driver of the lorry had valid driving licence and the vehicle was duly insured with the 3rd respondent and therefore, all the respondents are jointly and severally liable to pay compensation, and that he was earning Rs.7,908/-per month as coal filler and on account of amputation, he could not do his duties and he was deprived of his earnings and claimed Rs.6,00,000/- as compensation.

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

6. Respondent No.3 opposed the claim taking a specific plea that the petitioner was travelling as a passenger in the lorry in contravention of the terms and conditions of the policy and, therefore, no liability can be tagged on it, and thus, sought to dismiss the claim petition against it.

7. Based on the said pleadings, the Tribunal has framed two issues.

8. During enquiry, petitioner-injured examined himself as PW.1 and marked Exs.A1 to A11. On behalf of respondent No.3, no oral or documentary evidence was adduced.

9. The Tribunal, on appraisal of evidence on record, held that the respondents 1 to 3 are jointly and severally liable to pay compensation of Rs.3,60,000/- to the petitioner with interest at 9% per annum from the date of petition till realization. Challenging the same, the present appeal is preferred by the appellant – Insurance company.

10. Heard Sri E. Venugopal Reddy learned counsel for the appellant-insurance company, and Sri S. Sunder Reddy, learned counsel for the 1st respondent – claimant, and perused the records.

11. Learned counsel for the appellant – Insurance company contended that since the 1st respondent – claimant was a gratuitous passenger in the goods vehicle, the appellant-insurer is not liable to pay any compensation. He further contended that there is clear evidence on record with regard to the nature of travel made by the claimant and the Tribunal came to erroneous conclusion tagging the liability on this appellant, and ultimately, prayed to set aside the award passed against the appellant-insurance company.

12. Learned counsel for the 1st respondent-claimant vehemently contended that the claimant is not a gratuitous passenger in the lorry and after loading his goods i.e. the rice bag, when he was about to get into the lorry, the accident occurred and that there is no need to take a different view with regard to the finding of the trial Court, and absolve the appellant-insurance company from paying the compensation to the 1st respondent - claimant.

13. In view of the contentions putforth here, the following points have come up for determination:

1. Whether the claimant-injured was a gratuitous passenger in the lorry as contended by the appellant-insurer?
2. Whether the appellant-insurer can be absolved from its liability?
3. Whether the impugned order under appeal is liable to be seta side?

14. The evidence of PW.1 (claimant)-injured reveals that three years prior to his deposition i.e. on 11.11.1999, he was waiting with a bag of rice at bus stop, then a lorry bearing No.AP 9V 3060 came, and the cleaner of the lorry offered him a lift and he loaded the rice bag in the lorry and while he was about to board the lorry, the driver of the

lorry drove the same, then the front tyre ran over his left leg. Immediately, he was admitted in SCC hospital by the police at Srirampur and thereafter, he was shifted to the Area Hospital, Godavarikhani, on the same day. He was treated there till 23.01.2000 and his left leg was amputated below the knee in the Area Hospital, Godavarikhani. As his injury was infected, another operation was conducted and skin grafting was done. Through his evidence, Ex.A1-attested copy of FIR, Ex.A2-attested copy of rough sketch of scene of offence, Ex.A3-attested copy of injury certificate, Ex.A4 attested copy of driving licence, Ex.A5-photograph of the claimant-injured (PW-1), Ex.A6-discharge card, Ex.A7-photostat copy of date of birth certificate, Ex.A8-original of termination orders of the claimant-injured, Ex.A9-another original of termination orders, Ex.A10-salary certificate of the claimant-PW.1 and Ex.A11-copy of policy, were marked.

15. In his cross-examination, PW.1 stated that he was waiting for a vehicle in order to go to Indaram village and when he tried to board the cabin of the lorry to pay the transportation charges of the rice bag as well as himself, the accident occurred and he suffered injuries and that the other two passengers also paid money. He denied that the lorry driver was not negligent. In Ex.A-1 attested copy of FIR, wherein it is mentioned that the claimant along with others was waiting to go to his village and he found the lorry bearing No.AP 9V 3060 near the bus stand and when he was about to get into the lorry, he met with the accident and suffered injuries. In Ex.A1 there is no specific mention that the claimant has put his rice bag in the lorry and thereafter, he tried to get into the lorry. Ex.A2 is the attested copy of rough sketch of the scene of offence and it does not disclose the claimant getting into the lorry after putting his rice bag, as contended by him. From the evidence of PW.1,

it is to believe that the claimant, while entering into the lorry suffered grievous and other injuries. The claimant has not examined any other person to substantiate that he was having a bag of rice and he wanted to travel on lorry along with his goods.

16. While analyzing the evidence on record, the Tribunal had given a finding that even it was assumed that the claimant loaded one bag of rice in the lorry, it does not come within the ambit or definition of owner of goods, the same is correct. The Tribunal held that since the claimant had not entered into the lorry, he was treated as a third party to the extent of tagging the liability against the appellant-insurance company, which is incorrect. In the circumstances of the case, had the claimant was the owner of goods and was trying to get into the lorry, had he met with an accident and suffered injuries, there is no hesitation to hold that the claimant is entitled for compensation. The copy of the charge sheet is not filed to believe that the claimant was the owner of the goods. Under these circumstances, it can only be held that the claimant was not owner of the goods.

17. Learned counsel for the claimant-injured relied on the decision reported in Oriental Insurance Company Limited Hyderabad v. Tadi Lova Raju and another[1] wherein it was held that though the injured claimant is a gratuitous passenger, the Insurance Company is liable to pay compensation, by relying on the decision of the Apex Court reported in National Insurance Company Limited v. Baljit Kaur and others (2004 (1) ALD 98 (SC), wherein it was held thus:

> "14. As to the liability of the appellant herein, the learned Counsel for the petitioner placed reliance on the decision rendered by this Court in *Reliance General Insurance Co. Ltd., Hyderabad v. Mohd. Saleem and another,* 2013 (3) ALD 246, upholding the direction of the Tribunal that the Insurance

[1] **2014(3) ALD 601**

Company to satisfy the award in the first instance and thereafter to recover the same from the owner of the vehicle, relying on the decision of the Hon'ble Apex Court in *National Insurance Company Limited v. Baljit Kaur and others,* 2004 (1) ALD 98 (SC) and it reads thus:

> "The Scheme of the Motor Vehicles Act, 1988 as can be seen from the provisions of Sections 147 and 149 is that after notice to the insurer when the award has been passed, the position of the insurer is that of a judgment debtor and it has legal obligation to satisfy the award, despite the fact that it is entitled to avoid liability on the ground of breach of terms and conditions of the contract or the statutory provisions so long as there is a valid third party insurance. A distinction has to be drawn between the defences which the insurance company can take under Section 149 of the Motor vehicles Act and its obligation to satisfy the decrees and awards insofar as victims/third parties are concerned. In MACMA Nos.2535 of 2006 and 1661 of 2006, a Division Bench of this Court to which Court rendered a judgment applying the ratio laid down in *Baljit Kaur and others's case* (supra), to the effect that even though the insurance company is not liable to pay compensation for violation of terms and conditions of the policy, it can be directed to satisfy the award in the first instance and then recover the same from the owner of the vehicle. (Para 10)
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> In the instant case also, by allowing the claimant to travel in a goods vehicle, the insured committed breach of terms of the policy, on account of which the insurance company cannot be held liable to pay compensation to the claimants. But, at the same time, the Tribunal is right in issuing a direction to the insurance company to satisfy the award in the first instance and thereafter recover the same from the owner of the vehicle. The said direction issued by the Tribunal is in accordance with law lay down by the Supreme Court in *Baljit Kaur and others's case* (supra). The finding of the Tribunal is therefore upheld. (Para 11)"

15. The petitioner has also relied on another decision in *United India Insurance Co. Ltd., rep. by its Divisional Manager, Tadepalligudem v. N. Appi Reddy and others,* 2011 (4) ALD 778 (DB) = 2011 (5) ALT 611 (DB), to order payment of award of amount by the 2nd respondent and the 2nd respondent to recover the same from the owner of the vehicle by initiating a proceeding before the executing Court without filing a separate suit for the said purpose, and Paragraphs 13 and 14 of the said decision reads thus:

> "13. Applying the ratio laid down in the above cited cases, we would like to emphasis that the offending vehicle *i.e.,* Tata Sumo bearing No.AP24 D 0999 had never been intended to be a vehicle which could be used for taking passengers on hire. It was registered and insured as a private vehicle and no extra premium was paid in respect of the passengers carried in the vehicle for hire. Therefore, in our view the learned trial Court went wrong in fastening the liability on the insurance company and the said finding is liable to be set aside.
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> 14. Accordingly, the finding recorded by the trial Court that the insurance company is liable to pay compensation to the claimants is set aside and it is held that the owner of the vehicle shall be liable to first satisfy the award. However, following the ratio in *Baljit Kaur's* case (supra), we direct the insurance company (appellant in CMA No.2535 of 2006 to first satisfy the award amount and recover from the owner of the vehicle by initiating a proceeding

> before the executing Court without filing a separate suit for the said purpose."
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> 16. In view of the aforesaid discussion and the ratio laid down in the decisions, it is ordered that the appellant-2nd respondent to pay the awarded amount to the 1st respondent–petitioner and then recover the same from the owner of the vehicle by initiating a proceeding before the executing Court without filing a separate suit for the said purpose",

and contended that the appellant is liable to pay the compensation to the claimant-injured and the same is required to be collected from the owner of the vehicle.

18. On the other hand, the learned counsel appearing for the appellant-insurance company relied on the decision reported in United India Insurance Company Limited, Nizamabad v. Itla Soundarya rendered in MACMA No.1613 of 2009 by this Court, wherein in the given circumstances, it was held that the Insurance company is not liable to pay any compensation and also further contended that the decision reported in New India Assurance Company Limited v.Asha Rani and others[2] also fortifies the facts and circumstances of the case since there is clear amendment to the Motor Vehicle Rules from 14.11.1999 onwards and the gratuitous passenger or unpaid passenger is not entitled for compensation from the Insurance Company. He further contended that in Asha Rani's case (supra 2), the Supreme Court held that the gratuitous passengers or unpaid passengers are not entitled for compensation.

19. It is evident from the decisions relied on by the counsel for the appellant reported in Asha Rani's case and also in MACMA No.1613 of 2009 on the file of this Court, a gratuitous passenger or unpaid passenger traveling in a goods vehicle is not entitled for any

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[2] 2003 ACJ (1) SC

compensation from the Insurance company and the principle to pay and recover is also not applicable.

20. It is evident from the record that the 1st respondent-claimant was not traveling in the lorry in question along with the rice bag as contended and it can be safely concluded that at the time of accident, he was intending to get into the lorry and to travel in the said lorry as paid passenger. Therefore, he cannot be construed as a third party. Therefore, the decisions cited by the learned counsel for the appellant–insurance company squarely apply to the case on hand.

21. Now the principle of insurance company paying compensation to the claimant and recovering the same from the owner has no application since the date of occurrence of accident is after 14.11.1994 in view of settled legal position. The Tribunal ought to have appreciated all these facts and circumstances before tagging the liability on the appellant- insurance company. It is not appropriate on the part of the Tribunal to tag the liability on the appellant-insurance company along with owner of the lorry. Therefore, the claim against appellant-insurance company is liable to be dismissed. As far as the assessment of compensation and tagging the liability on the owner of the vehicle is concerned, it is based on record and no other opinion can be substituted.

22. Hence, the appeal is allowed setting aside the order and decree under challenge insofar as the Insurance Company is concerned. In all other respects, the order and decree under challenge are maintained.

23. It is brought to the notice of this Court that in view of the interim order passed by this Court on 09.04.2004, the appellant-insurance company has deposited 50% of the compensation awarded by the Tribunal, and some of the amount is already withdrawn by the claimant-injured. Hence, it is open to the appellant – insurance company to recover the same from the owner of the lorry – respondent No.2 in the O.P. and not from the claim petitioner. The petitioner – claimant is also at liberty to recover the balance amount from the owner of the lorry. It is needless to state that the Tribunal shall pay, any amount lying to its credit to the Insurance Company.

24. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

February 17, 2017.
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