THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.184 of 2006

JUDGMENT:

This appeal is arising out of the Order and Decree, dated 05.07.2005, passed in O.P.No.819 of 2000 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge (F.T.C), Adilabad. The appellant herein is the second respondent and the first respondent herein is the petitioner before the Tribunal.

2. In this appeal, for the sake of convenience the parties are referred to as arrayed in O.P.No.819 of 2000.

3. Brief facts of the case, that are necessary for disposal of the present appeal, are as follows:

On 12.11.1998 while the petitioner was proceeding to Nirmal on his private work in a jeep bearing No.MH 26C 4125 and when it reached near Dilawarpur bus stage, the 1st respondent, being the owner & driver, drove the said jeep at high speed in a rash and negligent manner, due to which it turned turtle thereby the petitioner sustained fractures and multiple injuries all over his body. One of the occupants of the jeep had died while undergoing treatment. The petitioner was immediately shifted to Government Hospital, Nirmal, and from there, he was shifted to Nizamabad for better treatment. The petitioner was a retired teacher and he used to cultivate his lands. The petitioner used to earn an amount of Rs.50,000/- to Rs.60,000/- per annum. Therefore, the petitioner claimed compensation of Rs.1,00,000/-.

4. The 2nd respondent filed its counter denying its liability. It is contended that the petitioner has travelled in the said jeep as a gratuitous passenger or fare paid passenger and, therefore, the 2nd respondent is not liable to pay any compensation. The vehicle is a private jeep and it would not have been operated for carrying passengers. The 2nd respondent denies the injuries and the treatment taken by the petitioner. The claim of the petitioner is excessive. The driver of the vehicle was not having valid driving licence by the time of the accident.

5. On behalf of the petitioner, P.W.1 was examined and Exs.A-1 to A-34 were marked. On behalf of the respondents, no oral evidence was adduced, but Exs.B-1 & B-2 were marked.

6. The Tribunal, on consideration of the evidence available on record, awarded compensation of Rs.52,000/-, with proportionate costs and interest at 9% per annum, payable by the respondents.

7. Aggrieved by the Judgment of the Tribunal, the appellant-Insurance company preferred this appeal *inter alia* contending that the Tribunal has not considered the liability of the insurer in a proper perspective. There is no coverage of insurance policy for the person, who travelled in the jeep for the claimant, who travelled in the jeep.

8. Heard the arguments of the learned counsel for the appellant, Sri P. Harinath Guptha, and the learned counsel for the 1st respondent, Sri S. Surender Reddy.

9. The point for consideration is –

(i) Whether both the 2nd respondent and the appellant, the owner and insurer, are jointly and severally liable for payment of compensation?

(ii) Whether the 1st respondent is entitled to the relief of pay and recovery against the appellant-insurer.

10. Learned counsel for the appellant contended that the 1st respondent travelled as an unauthorized passenger and the appellant-insurer is not liable to pay compensation. It is also contended that the jeep was insured with Act Policy, which does not cover the risk of the passengers in the vehicle and, therefore, the appellant-insurer is not liable to pay compensation.

11. Learned counsel for the appellant placed reliance on a decision reported in ***National Insurance Company Limited Vs. Balakrishnan and another***[1], wherein it was held in para 28 of the judgment as under:

> ***"28. In view of the aforesaid analysis, we think it apposite to set aside the finding of the High Court and the Tribunal as regards the liability of the insurer and remit the matter to the Tribunal to scrutinize the policy in a proper perspective and, if necessary, by taking additional evidence and if the conclusion is arrived at that the policy in question is a "comprehensive/package policy", the liability would be fastened on the insurer. As far as other findings recorded by the Tribunal and affirmed by the High Court are concerned, they remain undisturbed."***

12. Learned counsel for the appellant further contended that since the policy is Act Policy, there is no coverage of risk of the

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[1] (2013) 1 Supreme Court Cases 731

passenger, who travelled in the jeep, as he becomes either an unauthorized passenger or a gratuitous passenger.

13. *Per contra*, the learned counsel for the 1st respondent submits that the appellant has not taken a specific plea that the vehicle is insured with Act Policy and, therefore, the insurer is not liable to pay compensation. It is further submitted that even if the 1st respondent is considered as a gratuitous passenger, the liability of the appellant-insurer is not exonerated, as the 1st respondent is a third party and, therefore, the liability of the appellant-insurer is not fully exonerated and the appellant may be directed to pay and recover the amount from the owner of the vehicle.

14. The learned counsel for the appellant placed reliance on a decision of the Apex Court reported in ***Civil Appeal Nos.3047 of 2017 & 3065 of 2017 in the case of Manuara Khatun & Others Vs. Rajesh Kr. Singh & Others***. Placing reliance on the above decision, it is submitted by the learned counsel for the appellant that even if the 1st respondent is considered as a gratuitous passenger, the liability of the appellant-insurance company is not exonerated as there is coverage of Act Policy. Learned counsel for the appellant further submitted that the accident occurred out of the use of motorcycle in public place and it is due to the rash and negligent act on the part of the driver of jeep and the Tribunal also held that the driver had driven the vehicle in a rash and negligent manner and was responsible for the accident. The liability of the appellant-insurance company cannot be exonerated. The 1st respondent being third party is entitled for pay and recovery in view of the ratio laid down in the case referred above. Learned counsel placed reliance on paras 22 and 23 of the

judgment in ***Manuara Khatun's case (supra 2)***, which reads as under:

> ***"22) In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No. 3) – they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra.***
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> ***23) Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that respondent No. 3-United India Insurance Company Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter respondent No. 3 – United India Insurance Company Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo)-respondent No.1 in these very proceedings by filing execution application against the insured."***

15. It is obvious that this is a case where the vehicle involved in the accident is covered with Act Policy. The vehicle is used in a public place and the liability of the driver of the vehicle is proved. The accident occurred out of the use of the motorcycle in a public place due to the rash and negligent driving of the driver of the jeep. There is valid insurance for the jeep, but it was an Act Policy.

16. The contention of the learned counsel for the appellant is that the 1st respondent travelled in the jeep as a gratuitous passenger and that is why there is no coverage of insurance policy.

No doubt, the contention of the learned counsel for the appellant is correct to some extent, but however, as the 1st respondent is the third party and there is coverage of insurance policy for the jeep under Act Policy, the liability of the appellant-insurer cannot be completely exonerated. Therefore, keeping in view the rational in the judgment reported in ***Manuara Khatun's case (supra 2)***, wherein pay and recovery can be ordered.

17. Learned counsel for the appellant submitted that the Tribunal has awarded interest at the rate of 9% per annum, which is on higher side and requested for revising the same and to award the interest at the rate of 7.5% per annum.

18. Considering the facts and circumstances of the case and the submissions of both the learned counsel, the appellant-insurer is directed to pay the compensation amount at the first instance to the 1st respondent and recover the same from the 2nd respondent, owner of the vehicle. Since the Tribunal has already granted 9% interest per annum, this Court is not inclined to reduce the rate of interest as it does not appear to be on higher side.

19. In the result, the Appeal is partly allowed, directing the appellant-insurer to deposit the balance of compensation amount within two (2) months from the date of receipt of a copy of this order, and thereafter recover the same from the 2nd respondent-owner of the crime vehicle. The appellant is directed to pay the compensation amount to the respondent No.1-claimant and recover the same from Respondent No.2-owner of the crime vehicle. On such deposit, the 1st respondent is permitted to withdraw the entire amount since the accident occurred in the year 1998.

No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

Date: 28th March, 2017

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