THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.3302 of 2009

Date: -04-2017

Between:

IFCO-TOKIO General Insurance Company Limited,
Trough its Manger, Uma Chambers, II floor,
Banjara Hills Road, Begumpet, Hyderabad.

... Petitioner.

And

Smt. Mompally Anjamma and others.

... Respondents

THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.3302 of 2009

JUDGMENT:

The appellant, aggrieved by the award passed by the Chairman, Motor Accidents Claims Tribunal-cum- Principal District Judge, Medak at Sangareddy in O.P.No.654 of 2006, dated 03-10-2008, preferred this appeal besides other grounds on the ground that the deceased was gratuitous passenger in the auto and even as per Ex.B3-R.C Book, the seating capacity of the auto is only one person. Hence, the Insurance Company has no liability to pay the compensation and when it has no liability to pay, the question of pay and recover does not arise. Therefore, the Tribunal erred in relying on the judgment in Swaran Singh's case and ordered pay and recover. Further, when the seating capacity of the auto is only one, the question of insurer covering the risk of owner of goods or his representative travelling in the vehicle does not arise. The driver of the auto did not have valid driving licence. Hence, the Insurance Company is not liable to pay compensation, but the Tribunal relying on the Swarn Singh's case erroneously passed the award.

2. The Tribunal erred in fastening the liability to the Insurance Company in spite of bringing to the notice that the owner has violated the terms of the policy. Hence the award is bad and contrary to law.

3. On the other hand, the respondents-claimants contended that after amendment of the Act 54 of 1994, which came into force with effect from 14-11-1994, the Insurance Company is liable to pay the

compensation to the owner of the goods, who was travelling in the vehicle along with the goods owner or his representative along with the goods even though no premium has been paid.

4. The brief facts of the case are that the deceased –Kompally Yadagiri was a Toddy Tapper, while so on 10-12-2005, he was travelling in an auto bearing No.AP.23 U 4672 met with an accident and succumbed to injuries, while shifting to Government Hospital, Siddipet.

5. The Tribunal, having considered the evidence of P.W.1, who is no other then wife of the deceased and an eye-witness to the accident P. Anjagoud, who was examined as P.W.2, while considering the documentary evidence of Ex.A1-certified copy of the F.I.R., Ex.A2-certified copy of the charge sheet, Ex.A3-certified copy of Motor Vehicle Inspector's report, Ex.A4-cetified copy of the Post Mortem Examination report, Ex.A5-certified copy of the inquest and Ex.A6-certified copy of scene of offence panchanama, came to the conclusion that P.W.1 is a direct witness to the accident, whose evidence is corroborated with Exs.A1 to A6 clinchingly proved that the accident occurred due to the rash and negligent driving of the auto driver, who drove the auto with high speed, lost the control, as a result, the auto turned turtle in which the deceased-Yadagiri sustained injuries and succumbed to injuries, while shifting to the Government Hospital. Those fats are not in dispute.

6. In the case of this Court reported in ***Mamindla Padma and others vs. Kanakadurga Leasing and Finance Ltd., Vijayawada***

***and others*[1],** wherein it was held that Exs.A5, A6, A8 & A11 show that the deceased was a member of Fisherman Cooperative Society, Palakurthy and he purchased fish breed at Kothapet and while bringing the same, he met with an accident. Therefore, as per oral and documentary evidence, the deceased Uppalaiah was travelling along with the goods at the time of accident. During cross-examination of P.Ws.1 & 2, the Insurance Company neither did not elicit that the deceased was an unauthorized passenger in goods vehicle at the time of accident, therefore, the Insurance Company was directed to pay compensation and recover the same from the owner of the crime vehicle.

7. In an other case of this Court reported in ***Oriental Insurance Company Limited vs. Yarava Laksmi Devi and others*[2]** wherein it was held that the though the owner of the goods travelling in a goods vehicle is not covered under insurance policy, after 14-11-1994 subsequent to amendment of Section 147 (1) (b) (i) of the 1988 Act, even the owner of the goods travelling in a goods vehicle is considered as third party covered under the policy. It was further held that as per M.V Amendment Act of 1994, the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorized representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his authorized reprehensive either dies or suffers bodily injury.

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[1] ***2011 (4) ALD 249***
[2] **2009 (4) ALT 151**

8. In the instant case, the trial Court, having considered the evidence of P.Ws.1 & 2 has elaborately discussed the documentary evidence Exs.A1 to A6 and find that the presence of the deceased in the auto at the time of accident was as a laborouer. Since the deceased was laborouer travelling on the auto trolley, the owner of the vehicle is liable to pay the compensation. There is no coverage of insurance policy for the worker working in the auto however, keeping in view of the above decision and other decisions of the Apex Court in *Swarn Singh's Case, Mallawwa's case* and *New India Assurance Company Limited vs. Asha Rani's case ((2003) (1) ALT 35 (SC),* the Insurance Company shall deposit the amount and recover it from the owner.

9. Coming to the conclusion Para, the Tribunal find that the respondents 1 & 2 are liable to pay the compensation and they are directed to deposit the amount within one month from the date of the award.

10. Now coming to the material on record, P.W.1, her son and mother-in-law filed the O.P against the owner and insurer-appellant herein claiming compensation. In the claim petition, against Column-4, 'occupation' of the person injured, it was noted as 'Toddy Tapper and agriculture'. Against Column No.10, it was noted that the deceased travelling as a 'laborouer to load and unload'. Coming to the pleadings pleaded that on that day, the deceased was travelling in the auto, after loading the toddy cases. In the chief evidence affidavit at Para No.2, P.W.1 specifically stated that her husband Kompally Yadagiri @ Yadagoud was a Toddy Tapper and also doing agriculture. On 10-12-2005, her husband Yadagri after loading the

toddy in the auto trolley, was proceeding to Verrareddipally Village. Coming to the cross-examination, she stated that the offending auto being used for transporting crates. At the time of accident, three passengers were travelling in the auto and she does not know whether Venkata Krishna & Joythirmai, who are teachers, were travelling along with her husband at the time of accident.

11. P.W.2, who is the direct witness to the accident, in the chief affidavit itself, he stated that on 10-12-2005 at 09:45A.M., he himself and Yadagiri, after loading toddy cases at Rudraram Toddy Depot into an auto trolley bearing No.AP 23 U 4672 were proceeding in the same auto trolley to Veerareddypally to supply toddy to different villages. In the bottom of the affidavit, the lost two lines stated that he himself and deceased-Yadagiri was working as laborouers under the owner of the said auto trolley. R.W.1 during cross-examination admits that the deceased was travelling in the auto trolley as a laborouer.

12. In Ex.A1-F.I.R., which was presented by the brother-in-law of the deceased and in Ex.A2-charge sheet, it was specifically asserted that the deceased since three months prior to the accident was working as a laborouer on auto bearing No.AP 23 U 4672. In the inquest report under Ex.A5 also noted the occupation of the deceased as labourer in Kallu depot. Therefore, the evidence in chief of P.Ws.1 & 2 and their admissions during cross-examination coupled with Exs.A1 & A2 and Ex.A5-inquest report clearly established that the deceased was a laborouer working under the owner of the auto trolley bearing No. AP 23 U 4672, which involved in the accident and on that day, he loaded the toddy into the auto and they were

proceeding in the said auto trolley to unload the toddy. Ex.B3 is the R.C Book of the offending auto bearing No. AP 23 U 4672, according to which, the offending vehicle is an auto trolley i.e., goods carrier and the seating capacity was noted only one i.e., owner/driver of the vehicle. Even according to P.W.1's evidence, there were three passengers present in the auto trolley at time of the accident. Ex.B2-copy of the policy also covers only the risk of the third parties and the owner and it does not cover the risk of labourer or owner of the goods.

13. In the case of *Oriental Insurance Company Limited vs. Yara Laxmi Devi and others*, a clear finding was that after amendment of the M.V Act 54/1994, which came into force with effect from 14-11-1994, the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorized representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The accident occurred on 10-12-2005 and even though the deceased along with other passengers were travelling in the goods vehicle as laborouer since no premium is paid and no endorsement covering the risk of laborouer, the Insurance Company is exonerated from paying the compensation.

14. The 2nd respondent-insurer though taken the plea that the driver did not possess valid and effective driving license, it did not choose to produce any oral or documentary evidence. Even according to R.W.1, they have not issued any notice to the first respondent immediately after knowing the accident, requesting him to produce the copy of the driving licence of the driver, R.C Book of

the auto trolley and fitness certificate of the auto trolley. Accordingly, the appellant-Insurance Company failed to comply with the obligation cast on it.

15. In the facts and circumstances discussed herein above, I find that even after amendment of the Act 54/1994 came into force with effect from 14-11-2002 since the first respondent did not pay any premium covering the risk of the owner of the goods or labourer, the Insurance Company is absolved from it's liability. Having considered the fact that the M.V Act is a beneficiary legislation and that the owner-first respondent alone is liable to pay the compensation directing the second respondent to pay and recover the amount.

16. With the above observation, the appeal is partly allowed, while setting aside the finding to the extent of the Tribunal that the respondents 1 & 2 are liable to pay the compensation to the petitioners-claimants and while upholding the other findings and held that the first respondent in O.P and 4th respondent in the Appeal is liable to pay compensation. However, in the facts and circumstances, the appellant-second respondent is directed to pay and recover the same awarded amount of Rs.2,12,000/-, after adjusting the amount already paid/deposited, which shall be deposited within one month from the date of receipt of a copy of this order. No order as to costs.

17. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of.

JUSTICE N. BALAYOGI

Date: -04-2017

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