HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 1776 OF 2006

JUDGMENT:

This Appeal is filed by the insurer aggrieved by the Award, dated 30.11.2005, passed in Motor Vehicle Original Petition No.288 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal–cum–IV Additional District Judge, Guntur (for short, 'the Tribunal').

2. The brief facts of the case are that, the petitioners and others were traveling in an Ambassador Car, bearing No.AP-16-H-1113 towards Tirupati, and when the car reached near check post at Medarametla, on National Highway No.5 road, the driver of the car dashed against the stationed lorry on its rare side. It is the case of petitioner, that the driver of the car drove the vehicle in a rash and negligent manner. The petitioner sustained grievous injuries in the accident due to the rash and negligent driving of crime vehicle, has claimed compensation of Rs.1,00,000/- against respondent No.1, owner and respondent No.2 insurer of the car are holding them jointly and severally liable to pay compensation.

3. The 1st respondent filed counter, wherein he has taken a plea that he sold his vehicle to one Malleswararao prior to the date of accident, therefore, he is not the owner of the crime vehicle by the date of accident. He has also pleaded that as the vehicle was insured with the 2nd respondent, he is only liable to pay compensation.

4. The 2nd respondent filed counter denying his liability on the ground that the crime vehicle was not insured with the 2nd respondent, and the driver of crime vehicle was not having valid

licence on the date of accident, and the compensation claimed by petitioner is excessive.

5. The claims Tribunal, has awarded compensation of Rs.77,500/- with interest at 6% per annum. Aggrieved by quantum of compensation, the insurer preferred this appeal.

6. The contention of the appellant is that under Ex.B.1 insurance policy, no additional premium was paid to cover the risk of the inmates of the car; that Ex.B.1 covers the risk of owner, driver and third parties only, therefore, the insurer is not liable to pay any compensation, as the policy does not cover the risk of passengers travelled in a car. It is submits that the 'Act policy' does not cover the risk of the passengers except the third party risk. The 'B' policy/comprehensive policy/package policy only covers risk of passengers in the car. In **National Insurance Co. Ltd. v. Balakrishnan and another**[1], at para 21 it is held as follows:

> "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. But, if the policy is a 'comprehensive/package policy', the liability would be covered. These aspects were not noticed in the case of *Bhagyalakshmi*[2], and, therefore, the matter was referred to a larger Bench. We

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[1] 2013 ACJ 199
[2] (2009) 7 SCC 148

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 Delhi High Court and we have also reproduce the same.”

Placing reliance on the above judgment, it is submitted that in the ‘Act policy’, there is no coverage of risk of passengers who travel in a vehicle. The comprehensive/package policy covers the risk of the inmates of the vehicle. He further submitted that the policy in the instant case is an ‘Act policy’ which does not cover the risk of the passengers traveling in a car. The Tribunal observed at para 8 of its order that the original of Ex.B.1 was issued as the car of respondent No.2 herein, was a private vehicle, and the said policy was an ‘Act policy’. Respondent No.2 paid Act premium of Rs.340/-, driver premium of Rs.15/- and service tax of 18%, in total Rs.373/-. Respondent No.1 did not pay any extra premium for carrying passengers in the car. At the time of accident, the vehicle was used as a hire vehicle and the driver of the car has no valid driving licence to drive the vehicle. The capacity of the car was 4+1, but 9 persons travelled in the car at the time of accident. It is relevant to refer to para 8 of the judgment of Tribunal, which is extracted below:

“Issue No.2:- There is no dispute that the vehicle is insured with R2 by R-1. There is no evidence that R1 was not the owner of the vehicle R.W1 an employee in R2’s company, deposed that the offending vehicle was insured with R2 as per the original of Ex.B1, that the original of Ex.B1 was issued as the car of R1 is a private vehicle and the said policy is an Act policy that R1 paid; Act premium” of Rs.340/- driver premium of Rs.15/- and service tax of Rs.18/- and in total R1 paid premium of Rs.373/- that R1 did not pay any extra premium for carrying passengers in his car and at the time of the accident, the offencing vehicle was used as a hired vehicle and the driver of the car had no valid driving licence, that the

> capacity of the car is 4+1, but there were 9 persons traveling in the car at the time of the accident, that R2 addressed a letter to the Additional Licencing Authority, Guntur to verify the licnece possessed by the car driver at the time of accident and one J.Venkateswarlu was the driver of the car at the time of the accident, that the licence No.6118/G.98 was ffake and it does not being a to the above J.Venkateswarlu and the above licence was issued to one Kalluri Venkaiah, that Ex.B2 is the letter with endorsement of the Additional Licencing Authority, and Ex.B3 is the Xerox copy of the driving licence and that therefore, R2 is not liable to pay compensation. He denied that Ex.B3 is fabricated by them and that R2 had the fake licence prepared and had sent to the licencing authority and got the fake endorsement obtained as per Ex.B.2 and that R.1 did not contravene any terms of the policy."

7. The evidence of R.W.1, who is an employee of insurance company, would show that as per the original of Ex.B.1, the offending vehicle was insured with insurance company. As far as the dispute with regard to the policy is concerned, the policy of the crime vehicle is an 'Act policy' and it is not a 'comprehensive policy' or the 'package policy' to cover the risk of the passengers in the car. As per the 'Act policy', the policy covers the risk of driver and the third party. Respondent No.2 did not pay any extra premium for carrying passengers in the car. Therefore, there is no coverage for the passengers traveling in the car.

8. The other contention of the appellant is that the driver of the crime vehicle was not having valid driving licence at the time of accident.

9. At this juncture, it is relevant to refer to the evidence of R.W.2. Para 9 of the impugned order, reads as follows:

> "RW.2 Administrative Officer in the RTO Office Guntur deposed that R2 addressed a letter tot them on 20.08.2002 for

verification of Driving Licence No.6118/G/98 and that they verified and noticed that such licence was issued to one Kalluri Venkaiah S/o Ramayya. He denied that J.VEnkateswarlu was possessing a valid driving licence and that R2 had not sent the court driving licence of the driver, Venkateswarlu."

10. Since the driver of the crime vehicle was not having valid driving licence by the date of accident, there is violation of the terms and conditions of the insurance policy under Section 147 of the Act.

As a matter of fact, this is an appeal by the insurance company challenging the violations of the conditions of the insurance policy. Respondent No.1 was a boy aged about 3 years, who received injuries in the said accident. The claim was Rs.1,00,000/-, whereas the Tribunal awarded had compensation of Rs.77,500/-.

12. It is the case of respondent No.1 that while he was traveling in the Ambassador car bearing No.AP-16-H-1113, the car dashed against the stationed lorry. The Tribunal held that the accident occurred due to rash and negligent driving of driver of the car. No doubt, respondent No.1 has sustained grievous injuries in the said accident, but, respondent No.2 contended that he sold away the vehicle to one Malleswara Rao even before the accident. The said plea was accepted by the Tribunal. No doubt, the said vehicle was insured with appellant insurance company, as such it is liable to pay compensation, if the violations are not proved.

13. As a matter of fact, the driver of the crime vehicle was not having valid driving licence at the time of accident and there is a finding on the said fact that the driver of the crime vehicle was not having valid licence and therefore, there is violation of terms and conditions of the policy.

14. The evidence of PW.1 shows that the boy was traveling along with his mother in a hired car from **Satanpalli** to Tirupati. In this case, Ex.B.1-insurance policy is only an 'Act policy' and it is not a comprehensive policy. Therefore, it is appropriate to refer to a decision reported in **Iyyapan v. United India Insurance Company Limited and Another**[3], wherein at para 16 it is held as follows:

> "The heading "Insurance of Motor Vehicles against Third-Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of the 1939 Act) itself shows the intention of the legislature to make third-party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons traveling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third-party insurance is in force."

15. No doubt, in the instant case, the policy is an 'Act policy'. The 'Act policy' does not cover the risk of the persons, who traveled in the crime vehicle. In the light of the decision reported in **Balakrishnan's case,** the Insurance Regulatory and Development Authority issued a circular to all the Insurance Companies in respect of the liability of the insurance companies about restating the position relating to the liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and the pillion rider on a two-wheeler under the comprehensive/package policy.

[3] (2013) 7 Supreme Court Cases 62

16. In the light of the above decision, an 'Act policy', which does not cover risk of the passengers in a private car, the owner of the crime vehicle is only liable to pay the compensation to the injured. The finding of the Tribunal making the insurer liable to pay the compensation is liable to be set aside.

17. In the result, the appeal is allowed setting aside the liability fixed against the appellant-insurance company. If any amount is deposited by the insurance company, it shall be recovered from the owner of the vehicle. The appellant may claim rest of the amount awarded by the Tribunal from the owner of the vehicle.

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

G. SHYAM PRASAD, J

MARCH, 10 2017
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