HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA.No.59 of 2006

JUDGMENT:

This appeal is arising out of the order dated 29.07.2005 in M.V.O.P.No.1250 of 2002 on the file of the Court of Motor Vehicles Accidents Claims Tribunal-cum-V Additional District Judge (FTC), Guntur (for short, 'the Tribunal').

2. This is an appeal filed by the National Insurance Company Limited, the second respondent in M.V.O.P.No.1250 of 2002. The said Original Petition was filed by the respondents 1 to 5 herein, the legal representatives of the deceased Mujawar Chansa @ Chan Saheb claiming compensation of Rs.2,00,000/- on account of his death in a motor vehicle accident occurred on 05.09.2002.

3. On the fateful day, the deceased was traveling along with other passengers in the tractor of the sixth respondent – owner from Kothapalem to Guntur carrying beans bags for the purpose of marketing the same at Guntur market. When the tractor reached near Hose Ganeshpadu turning, the driver of the crime vehicle turned the vehicle in a rash and negligent manner resulting in the link between the tractor and the trailor was broken and the tractor fell down in its right side, as a result of which, the deceased and the co-travellers fell under the bags of beans bags and sustained grievous injuries. The deceased was shifted to G.G.H., Guntur, and from there, to Vennela Nursing Home, Guntur, where he succumbed to injuries on 24.09.2002 during treatment. The appellant herein filed the written statement and additional written statement before the Tribunal denying the liability, age, occupation and income of the deceased and also the delay of 196 days in lodging the complaint about

the accident. It is further averred that instead of one person, six persons have traveled in the tractor by violating the terms and conditions of the insurance policy. It is also averred that the driver of the tractor was also not having the valid and effective driving licence and the tractor was not in a good condition to ply and as such the insurance company is not liable to pay the compensation. It is also averred that the compensation claimed by the claimants is excessive.

4. Heard learned counsel for the appellant Sri Ravi Shankar Jandhyala and learned counsel for respondent Nos.1 to 5 Sri G.V.S.Mehar Kumar.

5. The Tribunal awarded the compensation of Rs.1,62,000/- on account of the deceased and directed respondent No.1 – owner and respondent No.2 – insurer to deposit the amount, as the vehicle was covered by a valid insurance policy.

6. The learned counsel for the appellant contended that the policy taken by the owner of the vehicle was an agricultural policy and the tractor was meant for agricultural purposes. But the tractor was used for carrying beans bags and thereby violated the policy conditions.

7. On behalf of petitioners, Pws.1 and 2 were examined. P.W.2 is an eye witness to the accident, being co-traveller traveled along with the deceased. His testimony corroborates the contents of Ex.A.1 CC of FIR, Ex.A.2 CC of inquest report, Ex.A.3 CC of post mortem report and Ex.A.4 CC of charge sheet that on the fateful day, the deceased travelled along with others with his beans bags as owner of the goods, but not as gratuitous passenger. The Tribunal, on consideration of the evidence of P.W.2, the eye witness to the accident, and placing reliance on documents

Exs.A.1 to A.4, came to the conclusion that the deceased travelled in the tractor as owner of goods, the beans bags, and held that the second respondent is liable to pay compensation. It was further held that there was no breach of terms and conditions of policy and the vehicle was covered by a valid insurance policy. Therefore, the findings of the Tribunal are based on the evidence of P.W.2, the eye witness, and hence, there is no violation of terms and conditions of policy.

8. Learned counsel for the appellant placed reliance on a decision of the Apex Court in National Insurance Co. Ltd. v. Bommithi Subbhayamma[1] and submitted that there is coverage only for the risk of passengers traveling in a vehicle, who is a third party, owner of goods or his authorized representative. There is no coverage of the risk for any passenger carried in a goods vehicle whether for hire or reward or otherwise. In the case of Bommithi Subbhayamma (1 supra) in para 9, it was observed that "although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people".

9. In the instant case, the deceased said to have traveled as the owner of the goods by carrying his beans bags. It is also pertinent to note that he did not travel in the tractor as a driver, as there is only one

[1] (2005) 12 SCC 243

seat provided in the tractor and there are no seats provided in the tractor to sit and travel. It is the case of the claimants that the deceased traveled in the trailor along with his goods. Therefore, there is no coverage of risk for the deceased. If the deceased had traveled along with his goods as owner of goods and if he sits in the cabin of a lorry or any other vehicle, there is coverage of risk for him. In this case, he traveled as a gratuitous passenger. Therefore, the owner of the vehicle is liable to pay the compensation and the insurer shall pay the compensation at the first instance and recover the same from the owner.

10. As far as the contentions of learned counsel for the appellant are concerned, the policy was covered for the use of tractor for agricultural purposes. There is no evidence on record to show that the tractor is not being used for agricultural purposes as the tractor was used for carrying beans bags. But, it is the contention of the appellant that the deceased was an unauthorized passenger traveled in the tractor. However, the Tribunal held that Ex.B.1 and B.2 insurance policies were in force by the date of accident. The said policies cover the risk of third parties also. The said fact has not been denied by the insurer.

11. It is obvious that there is valid coverage of insurance for the tractor by the date of accident. There is evidence on record to show that the deceased traveled as owner of the goods. By virtue of 1994 amendment to the Motor Vehicles Act, 1988, it was incorporated that including the owner of the goods or his authorized representative carried in the vehicle. Even if it is considered that the deceased traveled in the tractor as a gratuitous passenger, the liability of the insurer is exonerated, but however, the insurer has to pay the compensation at the first instance

and recover the same from the owner of the tractor, as there is valid coverage of the insurance by the date of accident and the accident occurred due to the rash and negligent driving of the driver which was insured with the insurer and the person died is a third party to the insurance policy. For the said proposition of law, reliance can be placed on the decisions of the Hon'ble Supreme Court in Manager, National Insurance Co. Ltd. v. Saju P.Paul[2], National Insurance Co. Ltd. v. Ratibhan Kewat[3] and Civil Appeal No.3047 of 2017 and 3065 of 2017, dated 21.02.2017, wherein it was held that "if there is valid coverage of insurance policy, in the case of death of a gratuitous passenger or unauthorized passenger, the insurer shall pay the compensation at the first instance and recover the same from the owner of the crime vehicle".

12. The Hon'ble Supreme Court in Saju P.Paul's case (2 supra), held as follows:

> "26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in *National Insurance Co. Ltd. v. Baljit Kaur* {(2004) 2 SCC 1} and *National Insurance Co. Ltd. v. Challa Upendra Rao* {(2004) 8 SCC 517} should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, claimant was 28 years' old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The insurance company has already deposited the entire awarded amount pursuant to the order of this Court passed on 01.08.2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent No. 1) may be allowed to withdraw

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[2] (2013) 2 SCC 41
[3] ADJ 2015 (2) 504

the amount deposited by the insurance company before this Court along-with accrued interest. The insurance company (appellant) thereafter may recover the amount so paid from the owner (Respondent No. 2 herein). The recovery of the amount by the insurance company from the owner shall be made by following the procedure as laid down by this Court in the case of *Challa Upendra Rao"*.

13. The Hon'ble Supreme Court in Ratibhan Kewat's case (3 supra), held as follows:

"6. Recently, the Supreme Court in Manager, National Insurance Company Limited v. Saju P.Paul {2013 (1) TAC 414 (SC)}, irrespective of the fact that the Division Bench of the Supreme Court in some matter has referred the question regarding liability of the insurance company to first pay the compensation and then to recover it from the owner held that the principal which has been followed for long regarding first pay and then recover, cannot be held to be unjustified. It is settled law that mere reference of any question of law to a larger bench would not have the effect of disturbing the law which has been settled by the Court until and unless the reference is answered to the contrary.

7. The principle where the vehicle is covered by insurance policy, the insurer is liable to compensate the loss in the first instance and then may recover the amount from the owner of the vehicle in case of breach of any conditions of the policy, as such is binding precedent laid down under Article 141 of the Constitution of India and is not by way of special circumstances to do the complete justice under Article 142 of the Constitution of India. Accordingly, the above principle is a binding principle. I am therefore of the view that the appellant insurance company is not a party aggrieved by the impugned award so as to maintain the appeal."

14. The Hon'ble Supreme Court in another decision in a common judgment in Civil Appeal No.3047 of 2017 and 3065 of 2017, dated 21.02.2017, held as follows:

> "18. The facts of the case at hand are somewhat identical to the facts of the case mentioned supra because here also we find that the deceased were found travelling as "gratuitous passenger" in the offending vehicle and it was for this reason, the insurance companies were exonerated. In Saju P.Paul's case (supra) also having held that the victim was "gratuitous passenger", this Court issued directions against the Insurer of the offending vehicle to first satisfy the awarded sum and then to recover the same from the Insured in the same proceedings."

15. In view of the foregoing reasons, and in the light of the above decisions, this is a fit case where the insurer shall pay the compensation at the first instance to the claimants and recover the same from the owner of the crime vehicle.

16. In the result, the appeal is partly allowed, modifying the award passed by the Tribunal directing the insurer to pay the compensation at the first instance to the claimants and recover the same from the owner of the crime vehicle. No costs. Miscellaneous petitions, if any pending, shall stand closed.

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GUDISEVA SHYAM PRASAD, J

Date: 28.03.2017
TJMR