HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A. No.1617 of 2004

JUDGMENT:

Aggrieved by the Award dated 27.02.2004 in O.P.No.723 of 1998 passed by the Chairman, M.A.C.T-cum-III Additional District Judge, (Fast Track Court), at Nizamabad (for short 'the Tribunal'), R2/National Insurance Company Limited preferred the instant appeal.

2. The factual matrix of the case is thus:

a) The claimant, on 30.05.1998, while travelling in a DCM Toyota Van bearing No.AHT-6577 as owner of the goods from Hyderabad to Nagpur and when the Van reached Kondapalli village shivar, the driver of the vehicle drove in a rash and negligent manner and at high speed and at the same time, a lorry bearing No.MCA-2987 came in opposite direction with high speed and both the vehicles collided on the middle of the road due to which the claimant received injuries all over the body. Immediately he was shifted to Gandhi Hospital, Secunderabad. It is averred that accident was occurred due to rash and negligent driving of drivers of both the vehicles. On these pleas, the claimant filed O.P.No.723 of 1998 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2 who are owner and insurer of the offending Toyota Van and also against respondents 3 and 4 who are owner and insurer of the offending Lorry and claimed Rs.3,00,000/- as compensation.

b) R1 and R3/owners of the vehicles remained ex-parte.

c) R2/appellant/National Insurance Company Limited filed written statement denying all the material averments made in the claim petition and urged to put the claimant to strict proof. It denied coverage of insurance. It denied that the driver of the van was having valid and effective licence at the time of alleged accident and thus R1 committed breach of the conditions. It also denied that the claimant received injures and obtained treatment. Finally, it contended that accident was occurred due to gross negligence on the part of lorry driver and thus prayed to dismiss the OP.

d) R4/New India Assurance Company Limited filed a written statement denied that driver of the lorry was responsible for the accident. It also denied that lorry driver was having valid and subsisting driving licence at the time of accident and thus prayed to dismiss the OP.

e) During trial, PWs.1 and 2 were examined and Exs.A1 to A37 were marked on behalf of claimant. RW1 was examined and Ex.B1—policy copy was marked on behalf of respondents.

f) The lower Tribunal on appreciation of both oral and documentary evidence held that accident was occurred on account of rash and negligent driving by the driver of the Toyota Van and awarded Rs.75,000/- as compensation against respondents 1 and 2 with proportionate costs and interest @ 9% p.a. while exonerating R3 and R4.

Hence, the appeal by R2/National Insurance Company.

3. The parties in the appeal are referred as they stood before the lower Tribunal.

4. Heard arguments of Smt. S.A.V.Ratnam, learned counsel for appellant/Insurance Company. Notice sent to R1 and R2 unserved. Though notice served on R3 and R4, none appeared on their behalf.

5. Learned counsel for the appellant, while adducing a copy of the common judgment in C.M.A.Nos. 3608, 3609 and 3616 of 2004 dated 9.4.2009, would submit that in respect of the connected matters, this Court holding that the deceased/injured were not traveling as owners of their respective goods but they were only gratuitous passengers and thereby their risk was not covered under the terms of the policy in view of the judgment of the Apex court in ***New India Assurance Company Limited vs. Asha Rani***[1]**,** allowed the appeals filed by the Insurance Company. He would thus submit that in view of the covered judgment, the present CMA also may be allowed by setting aside the award passed by the lower Tribunal and the Insurance Company may be exonerated from its liability.

6. In the light of the above submission, a perusal of the Common Judgment in CMA Nos. 3608, 3609 and 3616 of 2004 would show that those matters relate to the present case, as they relate to the same accident. In respect of the appeals filed by the Insurance Company, a learned Judge of this Court observed thus:

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[1] (2003) 2 SCC 223=AIR 2003 SC 607= 2002 AIR SCW 5259

"Thus, we have three versions: One from the wife of the deceased to the effect that deceased was traveling with goods, the details of which are not mentioned; second, Ex. A1 version wherein it is stated that deceased/injured were carrying mangoes; and the third one is that they were traveling as labourers. The vague stand taken by dependants/injured would lead to an inference that an attempt was made to concoct a story to bring the liability of the insurer within the fold of Section 147 of the Act. After giving anxious consideration and sifting the evidence available on record, this Court is convicted that the deceased/injured were not traveling with goods and they were only gratuitous passengers, in which event, as per dicta laid down by the Supreme Court in ***New India Assurance Company Limited v Asha Rani,*** *the policy is not required to cover them."*

7. Thus, this Court has already opined that the deceased/injured had not traveled with the goods and they were only gratuitous passengers and therefore, their risk was not covered under the terms of the policy in view of the judgment in ***New India Assurance Company Limited vs. Asha Rani*** *(1 supra)***.** In view of the above covered judgment, the award passed by the lower tribunal in M.O.P.No.723 of 1998 holding that the petitioner therein was owner of the goods cannot be sustained. He was only an unauthorized/ gratuitous passenger in goods vehicle.

8. A perusal of Ex.B1 shows, it is only an act policy thus not covering the liability of gratuitous or unauthorized passengers. Therefore, in the light of the covered judgment, it can be said that the Insurance Company does not attain liability.

9. In the result, the CMA is allowed and the appellant/second respondent in the O.P is exonerated from the liability. However, the first respondent in the O.P/owner is held liable to pay compensation as awarded by the lower Tribunal. It is made clear that pending appeal, if any amount was deposited by the Insurance Company, the same shall be recovered from the first respondent/owner but not from the petitioner/claimant. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 13.04.2017
KA / SCS