

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**MACMA.No.341 OF 2018**

**JUDGMENT:**

The 2<sup>nd</sup> respondent/insurance company in M.V.O.P.No.230 of 2013 preferred this appeal under Section 173 of the Motor Vehicles Act, 1960 challenging the Award dated 25.10.2017 passed by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Kurnool mainly on the ground that the deceased P.Md.Subbatullah, the husband of the 1<sup>st</sup> respondent/claimant is unauthorized passenger in the lorry, the appellant is not liable to pay the compensation.

2. The appellant is the insurance company, respondents 1 to 4 are claimants, and the 5<sup>th</sup> respondent is the driver of the lorry.

3. The claimants filed petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.5,00,000/-, but restricted to Rs.2,00,000/- for the death of P.Md.Subbatullah in a motor accident that occurred on 11.01.2010 at about 12.30 p.m. on N.H.18, Thimmarjupalli Ghat within the limits of Orwakal Police Station.

4. It is the specific case of the claimants that the deceased P.Md.Subbatullah, the husband of the 1<sup>st</sup> respondent and father of respondents 2 to 4 was a mechanic and pesh imam earning Rs.10,000/- per month. On

11.01.2010, the Subbatullah along with his brother boarded a lorry bearing No. AP03 X 0961 at Allagadda to go to Kurnool, when the lorry reached Thimmarajupalli Ghat, the driver was unable to control the lorry, it was moved on the reverse direction instead of proceeding forward and that the Subbatullah and his brother got down from the lorry and tried to keep stones near rear tires to obstruct its movement towards reverse direction, in that process, the lorry dashed another stationed lorry of the 5<sup>th</sup> respondent left side, thereby the deceased crushed under the lorry. Thus, the accident occurred due to rash and negligent driving of the driver of the lorry of the 5<sup>th</sup> respondent.

5. As the Subbatullah died leaving behind respondents 1 to 4, who are legal heirs claimed total compensation of Rs.5,00,000/- under various heads, but restricted to Rs.2,00,000/- as the accident occurred due to rash and negligent driving of the driver of the 5<sup>th</sup> respondent's lorry.

6. The 5<sup>th</sup> respondent remained ex-party. The appellant/insurance company filed counter denying material allegations calling upon the claimants to prove that the accident was occurred due to rash and negligent driving of the driver of the lorry in which the Subbatullah was travelling and the lorry turned turtle on the Subbatullah. The claimants/respondents 1 to 4 are disentitled to claim compensation as the Subbatullah was travelling as

unauthorized passenger in a goods vehicle and that the insurance company is not liable to pay any compensation to the unauthorized passenger travelling in a goods vehicle. Hence, prayed to dismiss the claim petition.

7. The Tribunal basing on the pleadings framed the following issues:

- 1) Whether the accident dt.11.1.2010 took place because of rash and negligence on the part of driver of lorry bearing No.AP-03-X-0961 as stated in the petition?
- 2) Whether the petitioners are entitled to compensation? If so to what amount and from whom?
- 3) To what relief?

8. During enquiry, on behalf of respondent 1 to 4, PW.1 was examined and got marked Exs.A.1 to A.7. On behalf of the appellant/respondent No.2, RW.1 was examined and marked Exs.B.1 to B.6.

9. Upon hearing argument of both counsel, the Tribunal concluded that the accident was occurred only when the deceased got down from the lorry and made an attempt to obstruct its movement towards reverse direction by keeping stone near the rear tires of the lorry and when it hit the stationed lorry, the lorry turned turtle, fell down on the Subbatullah. The Subbatullah was only a third party, the insurance company is liable to pay compensation since the accident occurred only when the Subbatullah was on the road, but not in the vehicle.

10. Aggrieved by the Award passed by the Tribunal, the present appeal is filed raising several contentions mainly on the ground that the Subbatullah was an unauthorized passenger travelling in a goods vehicle since no premium was collected under the head and apart from that the accident occurred not due to negligence on the part of the driver of the lorry. Therefore, the insurance company cannot be made liable for payment of compensation and prayed to set aside the award passed against the appellant.

11. At the stage of admission, learned counsel for the appellant reiterated the said contention while requesting this Court to exonerate the insurance company/appellant from payment of compensation since the Subbatullah was only an unauthorized passenger in the goods vehicle and that non examination of brother of the deceased, who boarded along with the deceased is fatal to the case of respondents 1 to 4 and thereby, they failed to prove the rash and negligence attributed to the driver of the lorry and requested this Court to exonerate the appellant/insurance company from its liability to pay compensation.

12. Upon hearing argument of learned counsel for the appellant, the point that arise for consideration is:

***Whether the accident occurred due to rash and negligent driving of the driver of the lorry and if so, whether the insurance company is liable for payment of compensation for untimely death of the deceased –***

***P.Md.Subbatullah in a road accident occurred on 11.01.2010?***

13. Admittedly, the Subbatullah along with his brother boarded lorry, which is admittedly a goods vehicle to go from Allagadda to Kurnool and when the lorry reached Thimmarajupalli Ghat, the lorry instead of moving forward, started moving in the reverse direction. Immediately, the Subbatullah and his brother got down from the lorry and made sincere attempt to obstruct its movement towards reverse direction by keeping stone near the rear wheels, but the lorry hit another stationed lorry on its reverse direction and turned turtle. Immediately, the Subbatullah, who was making attempt to keep stone was crushed to death, due to fall of lorry.

14. PW.1 is the wife of the deceased, who is not an eye witness to the accident. The occurrence of accident was not disputed by the appellant while contending that the accident occurred not due to negligence.

15. The only question to be examined by this Court is whether the driver was negligent in driving the lorry.

16. It appears from the facts of the case that the lorry was not in good condition and when the lorry moving towards up, it could not move forward direction, but started moving towards reverse direction, by then, the persons, who are in the cabin of the lorry got down and made an attempt to obstruct its movement towards reverse direction. When the

driver of the lorry failed to drive the vehicle in forward direction and unable to control the vehicle in its movement towards reverse and hit another stationed lorry is only due to inability of the driver of the lorry to control the vehicle. If really the lorry is moving in reverse direction, the driver can apply hand break or break in proper manner, but the driver was unable to use his skills in its movement and failed to restrict its movement towards reverse direction. This itself suffice to conclude that the accident occurred due to negligence on the part of the driver of the lorry. Non examination of brother of the deceased is not fatal to the occurrence of accident as it is admitted. Therefore, the accident occurred only due to negligent driving of the driver of the lorry. The claims Tribunal discussed the material on record and concluded that when the driver was unable to move towards forward direction and the driver did not apply the breaks etc. at a right movement, based on the material available on record, the Tribunal rightly concluded that the accident was occurred due to negligent driving of the driver of the lorry and such finding cannot be disturbed while exercising power under Section 173 of the M.V. Act.

17. The other contention raised before this Court is that the policy did not cover the risk of unauthorized passenger in a goods vehicle. Lorry is transport goods vehicle and no premium was paid to cover the risk of passenger in a goods vehicle and in fact, it cannot carry passengers. However, by

the time of accident, the Subbatullah was not travelling in the lorry, but he was on the road as he got down from the lorry and trying to restrict reverse movement by keeping stone or boulder. Therefore, by the time of accident, the Subbatullah was a third party.

18. Section 146 of the M.V. Act prescribes necessity for insurance against a third party risk, but who is third party is not defined. In **National Insurance Company Ltd. V Faquir Chand and others**<sup>1</sup>, it was held that other than the contracting parties to the insurance policy, the expression "third party" therefore, should include everyone, be it a person travelling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject matter of the insurance policy. Therefore, the person who is walking on the road and the person travelling in another vehicle is third party and the policy cover the risk of third party. Therefore, the appellant/insurance company is liable to pay compensation for the untimely death of the deceased/ Subbatullah in the road accident, though initially the deceased travelled in the goods vehicle, but at the time of accident, he was not either in the cabin of the lorry or in the body of the lorry as passenger unauthorisedly. As such the deceased/Subbatullah was a third party and the appellant/insurance company cannot be exonerated from payment of compensation for the death of third party to the

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<sup>1</sup> AIR 1995 J 7 K 91

policy as rightly concluded by the Tribunal. The award of the Tribunal does not call for any interference of this Court by exercising power under Section 173 of the M.V. Act and I find no ground to interfere with the findings recorded by the Tribunal.

19. In the result, the appeal is dismissed confirming the Award dated 25.10.2017 passed in M.V.O.P.No.230 of 2013 by the Chairman Motor Accidents Claims Tribunal-cum-I Additional District Judge, Kurnool. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

19.02.2018  
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**M. SATYANARAYANA MURTHY,J**

