**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**M.A.C.M.A.No.269 OF 2006**

**JUDGMENT:**

The present appeal is preferred by respondent No.2 – The New India Assurance Company Limited in M.V.O.P.No.1025 of 2001 on the file of Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge, Fast Track Court, Cuddapah, aggrieved by the order and decree, dated 10.05.2005, passed in the said O.P., whereby and whereunder, a sum of Rs.88,000/- was awarded as compensation to the 1st respondent herein payable by both respondents i.e. 2nd respondent (owner of the offending vehicle) and appellant herein.

2. The appellant-The New India Assurance Company Limited is respondent No.2, whereas respondent No.1 is the petitioner/injured and respondent No.2-the owner of the Auto bearing No.AP 04T 7989 that involved in the accident, who is 1st respondent, in the O.P. before the Tribunal.

3. The fact-situation would reflect that, on 12.09.2001 the petitioner and two others were traveling in auto belongs to R1 bearing No.AP 04T 7989 from Cuddapah along with a load of 12 bags of Urea and when the auto reached near newly constructed bridge near their village, the driver of the auto drove the same with high speed in a rash and negligent manner and lost control over the same resulting which the

auto turned turtle. The petitioner and two others fell down from the auto and received serious injuries. After the accident, the petitioner was shifted to private hospital of Dr.Venkata Subbaiah and he was treated there for two days with fracture injury on his right foot and there after admitted in GGH, Cuddapah where he preferred a complaint to the police and later for better treatment the petitioner discharged from Government Hospital and admitted in private hospital of Dr.Venkata Subbaiah and took treatment for 25 days and spent huge amount. He owned and possessed 30 acres of land and earning Rs.50,000/- per annum. But, due to the accident he became permanently disabled person and could not attend the agricultural work and also not even walk to small distances and he used to walk with support of a stick. So due to injuries in the accident, the petitioner could not attend his agricultural work, he leased out the same to third persons. Therefore claiming compensation of Rs.2,50,000/- with interest.

4. The 2nd respondent filed counter denying the manner of the accident, age, profession and earnings of the petitioner. He also denied the contentions of the petitioner that due to rash and negligent driving of the auto driver, petitioner received injuries and became permanently disabled, and that the petitioner spent amount for medicines etc. He also denied the amount claimed under different heads by the petitioner

and the petitioner is put to strict proof of all the allegations made in the claim petition. He further states that the driver of the auto was not having driving licence to drive the auto as he possessed LMV (non-transport autorikshaw) only but he drove the offending vehicle using the same as transport vehicle. Hence he violated the terms and conditions of the policy and so this respondent is not liable to pay compensation and Respondent No.1 alone is liable to pay the compensation.

5. During enquiry, on behalf of the petitioner, he himself was examined as PW1 and marked Exs.A1 to A9. The petitioner also got examined Dr.G.Venkata Subbaiah as PW2. On behalf of 2nd respondent one of their employee Sri Muneeeppa was examined as RW1 and marked Ex.B1.

6. The Tribunal, on appreciation of evidence on record, recorded finding on issue No.1 in favour of the petitioner.

7. On issue No.2, while deciding the liability of respondents, the Court below fixed liability on both the respondents stating that though the 2nd respondent-Insurance company alleged that there is violation of terms and conditions of policy and as such it has no liability to pay compensation, the Tribunal holding that the driver of the auto not used the same as goods carrying vehicle, fixed liability equally on both the respondents.

8. Now, the short point that arises for consideration is, whether the insurance company is liable to indemnify the owner of the vehicle?

9. Though the present appeal is filed challenging the judgment and award but the counsel for the appellant restricted his argument to the liability of the insurance company.

10. According to him, the Insurance Company is not liable to pay any compensation as there is violation of terms and condition of policy. He submits that the offending vehicle is a transport vehicle and it is not goods vehicle. Whereas the offending vehicle was carrying 12 urea bags at the time of accident, as such there is clear breach and violation of terms and conditions of the policy since the offending vehicle was used as goods vehicle by transporting 12 bags of urea. As such, the Tribunal below should have held that the appellant/insurance company is not liable to pay any compensation to the 1st respondent.

11. Though notice is served, there is no appearance on behalf of respondents.

12. Turning to the grievance of the appellant herein, it is no doubt true, as could be seen from the evidence on record, that the offending vehicle is not a goods vehicle but, the 2nd respondent who is having LMV (non transport with auto-

rikshaw only), drove the offending vehicle by using it as non-transport vehicle, which resulted in violation of terms and conditions of the policy. Therefore, the Tribunal erred in holding that the driver not used the crime vehicle as goods carrying vehicle and as such, there is no violation of terms and conditions of the policy.

But in view of the law declared by the Apex Court in **S.Iyyapan v. United India Insurance Company Limited and another**[1], initial liability can be fastened on the insurance company and the insurance company cannot seek total exemption.

13. The issue as to whether the insurance company is liable to pay any compensation, where the terms and conditions of policy are violated came up for consideration before the Apex Court in **NATIONAL INSURANCE COMPANY LIMITED V. SWARAN SINGH AND OTHERS**[2]., the Apex Court held as follows :

> 10. Coming to the contention of the learned counsel for respondent Nos.1 to 5 that even in the absence of any liability on the insurance company, the responsibility is still on the latter to pay the amount to the claimants and recover the same from respondent No.6, in Swaran Singh (supra) a three Judge Bench of the Apex Court has dealt with this aspect with reference to the case law holding the field on this issue. The Supreme court

[1] (2013) 7 SCC 62
[2] (2003) 3 SCC 297

made reference to its various earlier judgments including those in British India General Insurance Co., Ltd., v. Captain Itbar Singh and others (1960) 1 SCR 168), BIG Insurance Co., Ltd., v. Captain Itbar Singh and others (AIR 1959 SC 1331), Skandia Insurance Company Ltd., v. Kokilaben Chandevadan and others (1987) 2 SCC 654), Sohan Lal Passi v. P.Sesh Reddy and others (1996) 5 SCC 21), Kashiram Yadav and another v. Oriental Fire and General Insurance Co., Ltd., and others (1989) 4 SCC 128) and held that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or the driver thereof has been holding the field for a long time."

14. Therefore, the absolute liability fastened on the insurance company can be modified to that of initial liability to pay the compensation amount, initially, determined by the Tribunal, and recover the same from respondent No.2 – owner of the Auto. To that extent, the appeal can be allowed modifying the order and decree passed by the Tribunal. No order as to costs.

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

**A.RAJASHEKER REDDY, J**

02.02.2018
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