THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 2733 of 2007

JUDGMENT:

The Oriental Insurance Company Limited represented by its Divisional Manager has come up with this appeal questioning the order passed by the Chairman, Motor Accidents Claims Tribunal-cum-I-Addl. Chief Judge, City Civil Court, Secunderabad (for short "the Tribunal") in OP No. 112 of 2004 dated 12.7.2006 making it liable to pay the compensation of Rs.4,33,000/- to the claimants in the above mentioned OP.

The facts which led to filing of the present appeal are briefly stated as under,

The petitioners in OP No. 112 of 2004 are the wife, children and mother of the deceased Nageswararao who died in the accident dated 10.3.2004. It is their contention that on 9.3.2004 at about 11.00 P.M. while the deceased Nageswararao was proceeding along with vegetables from Manoharabad towards Nizamabad market in the lorry bearing No. MH 17A 8544 to sell them in Nizamabad market, the abovementioned lorry hit a road side tree in the early hours of 10.3.2004 at about 2.00 A.M. and turned turtle due to the rash and negligent driving of the same by its driver, as the result of it, the deceased Nageswararao sustained multiple fracture injuries all over the body and succumbed to the said injuries on the spot. Police of Chegunta registered a case in Cr.No. 36 of 2004 under Section 304-A IPC against the driver of the abovementioned vehicle.

The wife, children and mother of the deceased Nageswararao laid the claim as against the owner and insurer of the crime lorry for compensation of Rs.4,00,000/-. The Tribunal, on appreciation of oral and documentary evidence available in the case record, awarded compensation of Rs.4,33,000/- by fixing the liability of payment of compensation as against the owner and insurer of the crime lorry. Having been aggrieved by the findings recorded by the Tribunal in fastening the liability as against the insurer of the offending lorry, the insurer i.e., Oriental Insurance Company Limited has come up with the present appeal.

Heard the arguments of learned counsel for both sides and perused the oral and documentary evidence available in the case record.

The appellant's main contention is that the Tribunal has failed to see that the vehicle involved in the accident was booked for transporting of cement load from Maharastra State for unloading the same at Cherlapally and that the lorry was not booked by the deceased for carrying of vegetables to market and no receipt as such was produced by the claimants establishing payment of freight charges by the deceased to take the vegetables to Nizamabad market. Even if the deceased Nageswararao died in a lorry accident while taking vegetables in it to the market, no evidence as to payment of freight charges for transporting of vegetables was produced. Though the deceased travelled as a mid-way passenger, the Tribunal has fastened the liability as against the appellant herein to pay the compensation to the legal representatives of the deceased. The appellant's further contention is that carrying of vegetables in a 'goods carrying vehicle' would fall within the purview of transporting of luggage and it would not fall within the definition of the 'Goods' defined in the Motor Vehicles Act, 1988. The Tribunal has committed material irregularity in holding that carrying of tomato baskets in a goods vehicle will fall within the meaning of 'Goods' defined in the Motor Vehicles Act, 1988, and has wrongly fastened the liability of payment of compensation as against the appellant herein, though it is not liable to pay the compensation in view of the decisions rendered by the Apex Court in *New India Assurance Co. Ltd. Vs. Asha Rani and others* [1] and *National Insurance Company Limited Vs. Bommithi Subbayamma* [2] holding that the insurance company cannot be held liable to pay compensation in respect of passengers traveling in a goods transport vehicle, and that the luggage does not fit within the meaning of 'Goods' defined under the Motor Vehicles Act, 1988 and that the order passed by the Tribunal fastening of the liability as against the appellant to pay the compensation to the claimants is against the settled principles of law and the same is liable to be set aside. These are the prime contentions raised by the appellant to seek to set aside the order passed by the Tribunal.

The learned counsel appearing for the respondents 1 to 4 who are the claimants in OP No. 112 of 2004 states that the order passed by the Tribunal is not suffering from any material irregularity and that the Tribunal, on thorough appreciation of the principles of law, has fastened

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[1] 2003 (1) ALD 18 (SC)
[2] 2005 ACJ 721 (SC)

the liability as against the appellant herein to pay compensation to the claimants.

So far as the issue relating to the negligence attributed to the driver of the crime lorry, the insurance company has not expressed any grievance. It has also not disputed the quantum of compensation awarded by the Tribunal and its main grievance is regarding fastening of the liability as against it to pay the compensation. Hence the Court intends to confine its discussion only on the issue "whether the insurance company can be absolved of its liability to pay the compensation to the claimants".

The main grievance of the appellant-insurance company is that items i.e., vegetables carried by the deceased at the material point of time in the vehicle belonging to respondent No.5 herein would not fall within the purview of the 'Goods' and that the vehicle was booked by the deceased while it was returning back to its original place after unloading gas cylinders at Cherlapally and no freight charges as such were paid by him to carry the vegetables in the vehicle belonging to the respondent No.5 herein, who did not choose to contest the case, and that the deceased was a mid-way passenger. Since these being the contentions of the appellant, the evidence of R.W.1 on which reliance was placed by it, is to be appreciated thoroughly. The appellant seems to have raised a contention with greater vehemence that the deceased travelled as an unauthorized passenger though he was not supposed to travel in a goods vehicle which was meant for carrying goods alone.

It was deposed by R.W.1-Y. Shiva Kumar, Assistant Divisional Manager of the appellant company that the insurance policy issued in respect of the crime lorry was in force from 14.11.2003 to 13.11.2004 and the vehicle insured with them was a '*goods carrying vehicle'* and not a passenger carrying vehicle. The terms and conditions stipulated in the policy themselves would speak to the fact that the risk of unauthorized passenger is not covered. It was deposed by R.W.1 in his evidence that as per the contents of FIR and the charge sheet, the deceased boarded the crime lorry at Manoharabad with the load of vegetables to take it to Nizamabad market. It was also deposed by him that after the gas cylinders were unloaded at Cherlapally, it was stopped at Manoharabad by the driver to have dinner, and during that time the deceased approached him with a request to take the vegetables to Nizamabad market in the crime lorry. It was admitted by R.W.1 that the vegetable bags were loaded in the crime vehicle to unload them at Nizamabad market by the deceased and that the deceased paid Rs.350/- to take the vegetable bags to Nizamabad market.

The evidence of R.W.1 referred to above would clearly indicate that the deceased had not travelled as an unauthorized passenger in the crime vehicle and that the accident had taken place while he was taking the vegetables to Nizamabad market from Manoharabad. The vegetables carried in the lorry by the deceased were not meant for his personal purpose and they were loaded in the crime lorry to take them to Nizamabad market to sell them there. The evidence of R.W.1 referred to above would clinchingly establish the fact that the deceased had not travelled as an '*unauthorized passenger*' in the crime lorry as contended by the appellant. He also had not travelled as a gratuitous passenger and that he paid the charges to take the vegetables to Nizamabad market in the crime vehicle. Because of non-production of any receipt regarding payment of charges by the deceased, it is hazardous to say that no freight charges were paid by the deceased to take the vegetables from Manoharabad to Nizamabad market. The evidence of R.W.1 is clear to the effect that the vehicle was engaged by the deceased to take the vegetables from Manoharabad to Nizamabad market and he had paid the freight charges etc. The vegetables taken by the deceased in the crime lorry to Nizamabad market for the purpose of selling the same would not fall within the definition of 'luggage' as defined in Oxford Dictionary. The word 'Goods' defined in sub-Section 13 of Section 2 of the Motor Vehicles Act, 1988 is as follows,

> "goods includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle."

The vegetable bags said to be loaded by the deceased in the crime vehicle for taking them to Nizamabad market cannot be termed as 'luggage' or 'personal effects', since they were being taken to market for the purpose of selling the same. For taking vegetable bags to Nizamabad market for the purpose of sale vehicle needs to be engaged. While the deceased was taking the vegetable bags to Nizamabad market from Manoharabad, he met with an accident and that he had not travelled in the crime vehicle as a gratuitous passenger or as an unauthorized passenger, as contended by the appellant-insurance company.

The appellant-insurance company seems to have made the Tribunal go through the decision of the Apex Court in *Asha Rani's* case (1st supra). The sum and substance of the findings recorded in the said case is only to the effect that the insurance company has to first pay the compensation to the claimants and then recover it from the owner of vehicle by initiating necessary legal proceedings on establishing the contentions raised by it.

The learned Tribunal has assigned valid and cogent reasons to come to a logical conclusion in the present case and that the well reasoned award passed by the Tribunal in fastening the liability as against the appellant, in my view, needs no intervention.

In view of the above conclusion arrived by me, the appeal filed by the insurance company fails and the same is hereby dismissed. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

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JUSTICE J. UMA DEVI

Dt.3.1.2018
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