

***THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

+ C.M.A.No.2746 OF 2004

% 29—11—2019

M/s.United India Insurance Co.
Limited, rep. by its Branch Manager

...Appellant

vs.

\$ Bagili Mallesham and Another

... Respondents

!Counsel for the Appellant: Smt.Satya Manjula

^Counsel for Respondent No.1: --

^Counsel for Respondent No.2: Sri P.Lakshma Reddy

<Gist :

>Head Note :

? Cases referred

1. 2004 (3) KLT 397
2. 2015 (6) ALD 166 (SC)
3. 2014 ACJ 1727

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

C.M.A. No.2746 of 2004

M/s.United India Insurance Co.
Limited, rep. by its Branch Manager

...Appellant

And

Bagili Mallesham and Another

... Respondents

JUDGMENT PRONOUNCED ON: 29.11.2019

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

T.AMARNATH GOUD, J

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.M.A. NO.2746 OF 2004

JUDGMENT:

This appeal is preferred by the appellant/Insurance Company questioning the Order and Decree of the Motor Vehicles Accident Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy (for short, the Tribunal) in M.V.O.P.No.120 of 2002, dated 18.03.2004.

2. Appellant herein is respondent No.2, respondent No.1 herein is the claim petitioner and respondent No.2 herein is respondent No.1 before the Tribunal. For the sake of convenience, the parties hereinafter are referred to, as they are arrayed before the Tribunal.

3. The brief facts of the case are that on 27.02.2001, the petitioner brought the tractor bearing No.AP23T 531 belonging to respondent No.1 for ploughing his land. At about 4.00 pm., the driver of the tractor drove the same in a rash and negligent manner and dashed the petitioner, due to which, the petitioner fell down on the ground and both his legs came underneath the wheels of the tractor. In the said accident, the petitioner sustained fracture injuries. He filed the aforesaid MVOP against the owner and insurer of the tractor, claiming compensation of Rs.1,50,000/- for the injuries sustained by him.

4. Before the Tribunal, owner of the tractor, remained *ex parte*. The Insurance Company filed counter denying the allegations and contended that as the owner of the tractor leased the tractor to the

petitioner by violating the conditions of the policy, it is not liable to pay any compensation and prayed to dismiss the claim petition.

5. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the tractor and awarded total compensation of Rs.3,23,000/- under various heads, with interest at the rate of 6% per annum. Aggrieved by the said order, the appellant/Insurance Company filed the present appeal.

6. Smt.P.Satya Manjula, learned Standing Counsel for the appellant-Insurance Company, submits that the policy issued covers the Tractor in question with a condition to use the same for agricultural purpose only and the policy does not cover use of the vehicle for commercial purpose. It is also submitted that as the owner of the vehicle leased out the vehicle to the claimant, he violated the terms and conditions of the policy and therefore the Insurance Company is not liable to pay any compensation and prays to set aside the order of the Tribunal. In support of her submissions, she relied on a judgment of the Apex Court in **National Insurance Co. Ltd. Vs. Chinnamma**¹.

6. Sri P.Lakshma Reddy, learned counsel for respondent No.2/owner of the tractor, submits that there is no condition in the policy of insurance prohibiting plying of vehicle on hire, and hence, hiring the Tractor to the claimant for his agricultural operations does not violate the terms and conditions of the policy. He further

¹ 2004 (3) KLT 397

submits that assuming that the owner gave the Tractor to the claimant on lease, it is only for the purpose of his agricultural operations, but not commercial purpose. Moreover, there is no documentary evidence before the trial Court to prove the same. Therefore, the Insurance Company cannot escape its liability on the mere ground that the Tractor was hired to the claimant and the Tribunal rightly awarded the compensation and prays to dismiss the appeal. He relied on a judgment of the Apex Court in **Managing Director, KSRTC V. New India Assurance Co. Ltd.**² and a judgment of High Court of Allahabad in **United India Insurance Co. Ltd. Vs. Suman**³.

7. In **Chinnamma's** case (supra), the deceased therein used to carry on business in vegetables. While he was transporting the vegetables in a Tractor, due to the rash and negligent driving of the driver of the Tractor, he died. In those circumstances, the Apex Court held that the Tractor and Trailer were not being used for agricultural purposes and exonerated the liability of the insurance company. The facts of the said case are different from the facts of the present case and hence, the said decision cannot help the appellant.

8. In **Suman's** case (supra), the accident had occurred when one of the wooden logs loaded on the trolley fell upon the deceased. In such circumstances, the Apex Court confirmed the judgment of the Tribunal in finding the insurance company liable to pay amount of compensation. In **Managing Director, KSRTC's** case

² 2015 (6) ALD 166 (SC)

³ 2014 ACJ 1727

(supra), the Apex Court had an occasion to deal with the questions *‘whether in the wake of lease agreement entered into by registered owner with KSRTC, the registered owner and insurer along with KSRTC can be fastened with the liability to make payment to the claimants and whether KSRTC can recover the amount from registered owner and its entitlement to seek indemnification from insurer’* and held that registered owner, insurer as well as KSRTC would be liable to make the payment of compensation jointly and severally to the claimants and the KSRTC in terms of the lease agreement entered into with the registered owner would be entitled to recover the amount paid to the claimants from the owner as stipulated in the agreement or from the insurer. In the present case, there is no written lease agreement between the owner and claimant for leasing the tractor.

9. In Indian village standards, most of the farmers are poor and they cannot afford to purchase a tractor. In the said living conditions, the most of the farmers get the tractors on lease from the owners for their agricultural operations. In the present case also, the claimant took the tractor from the owner i.e., respondent No.2 herein on lease for ploughing his land. While doing so, the driver of the tractor drove the same in rash and negligent manner and dashed the claimant, due to which, he sustained injuries. It is to be noted that though the tractor was leased, the same was used for agricultural purpose i.e., ploughing of land, but not commercial purpose or otherwise. Therefore, it cannot be said that the tractor was used for commercial purpose and the owner violated the terms and conditions of the policy.

10. With regard to the evidence of P.W.1 that “*he was cultivating the land through the tractor of Respondent No.1 on lease*”, it is not in the clear terms whether the tractor is on lease or agricultural lands are on lease. The insurance company had to examine P.W.1 on this aspect, but it had failed to do so. Since it is a beneficial legislation, this Court is inclined to consider the case of the claimant positively. It is to be noted that insurance is a business to the insurance company, however, the rights of a poor farmer, who is the claimant herein, cannot be deprived under the beneficial legislation. Hence, the Insurance Company is liable to pay any compensation. Having regard to the facts and circumstances of this case, I am of the opinion that the Tribunal has passed a well reasoned order. Therefore, no interference is required in the award passed by the Tribunal. Consequently, the appeal is liable to be dismissed.

11. Accordingly, the Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

T.AMARNATH GOUD, J

Date: 29-11-2019

Note: L.R. Copy to be marked.

B/o. TJMR