HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.777 of 2005

JUDGMENT:

This Appeal is filed by the appellants-Insurance Companies, against order and decree dated 08.11.2004 in OP No.403 of 2000 wherein and whereby the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy, (for short 'the Tribunal') allowed the claim petition filed by the respondents/claimants by granting Rs.2,00,000/- towards compensation.

2. For the sake of convenience, the parties hereinafter will be referred to as arrayed in the Original Petition. Brief facts which are necessary for disposal of this Appeal are as follows:

That on 23.02.2000 at 9.30 a.m, when the deceased and others were travelling in a lorry bearing registration No.AP 9V-2017 to attend the marriage and when the same reached near Shivampet, another lorry bearing registration No.AAT 4377, came in opposite direction, driven in a rash and negligent manner, dashed the lorry bearing No.AP 9V-2017. As a result of which, the occupants of lorry bearing No.AP 9V 2017 including the deceased sustained grievous injuries and the deceased succumbed to the injuries while undergoing treatment in the Gandhi Hospital, Secunderabad on 02.03.2000. Police, Pulkal, registered a case in Cr.No.5 of 2000 against the driver of the lorry for the offences punishable under Sections 337, 338 & 304A IPC. The deceased was aged 45 years and was working as Hamali in Civil Supply Department on a daily wages of Rs.100/- plus Rs.50/- towards daily batta, which he was contributing to the petitioners 1 to 3, who are wife, son and daughter, respectively, as they lost their bread winner, they filed claim petition claiming compensation of Rs.2,00,000/- from the respondents 1 to 4, i.e., the respondents 1 & 2, the owner and insurer of lorry AP 9V 2017 and also respondents 3 & 4, the owner and insurer of lorry bearing No.AAT 4377, on the ground that the accident occurred due to rash and negligent driving of both the driver of the said lorries.

3. The first respondent filed counter denying the averments in the petition, putting the petitioners to strict proof of the same and that if the claim is proved, the 2nd respondent is only liable to pay the compensation as he validly insured his lorry bearing No. AP 9V 2017 with the 2nd respondent vide policy No.051403/31/021/11/36993/1999 valid with effect from 27.10.1999 to 26.10.2000.

4. Common counter affidavit is filed by the respondents 2 and 4 denying the averments in the claim petition contending that the deceased was an unauthorized passenger in goods vehicle i.e., AP 9V 2017, as such, petitioners are not entitled to claim any compensation from the insurance company. That the accident was not informed to the insurance company, as such, the insurance company is not liable to pay compensation to the petitioners and that the claim is excessive, and sought for dismissal of the petition.

5. Since there is no representation for the 3rd respondent, he is set ex parte.

6. Based on the above pleadings, the following issues were framed by the Tribunal.

i) Whether the pleaded accident occurred due to the rash and negligent driving of the Lorries AP 9V 2017 and AAT 4377 or by both?

(ii) Whether the lorries AP 9V 2017 and AAT 4377 were insured with second and fourth respondents, respectively at the time of accident?

(iii) Whether the petitioners are only the L.Rs of the deceased?

(iv) What is the just compensation to which the petitioners are entitled and from whom?

(v) To what relief?

7. To prove the case of the petitioners, P.Ws.1 & 2 were examined and Exs.A1 to A5 were marked on their

behalf. On behalf of the respondents 2 & 4, R.W.1 was examined and Exs.B1 & B2 were got marked.

8. The Tribunal, after considering both the oral and documentary evidence adduced on either side, granted Rs.2,00,000/- (Rupees two lakhs only) to the petitioners with proportionate costs and interest at 9% per annum from the date of petition till date of realization, directing the respondents 1 and 2 to deposit the said amount within 30 days. Aggrieved by the same, insurance company filed the present appeal.

9. Learned counsel for the appellants submitted that since the deceased was travelling in a goods vehicle, insurance company is not liable to pay compensation, as the claim is not covered by the policy. In support of his contention, he relied on the judgments reported in **B.Rajnikanth v. P.Rajaiah[1], Mallawwa and others v. Oriental Insurance Co.Ltd.,[2] and National Insurance Co. Ltd., v. Bommithi Subbhayamma and others[3].**

10. On the other hand, learned counsel appearing for the respondents/claimants submits that even in cases wherein the insurance company is not liable to pay compensation, the insurance company has to pay the amount first and recover the same from the owner of the

[1] 2017 (3) ALD 465
[2] 1999 ACJ 1
[3] (2005) 12 Supreme Court Cases 243

vehicle subsequently, which involved in the accident. In support of his contention, he relied on the judgments reported in **Branch Manager, United India Insurance Co., Ltd., Dabagardens, Visakhapatnam v. Dadisetti Ramanamma**[4], **Manuara Khatun v. Mamoni Saikia Mohanty**[5].

11. In this case, it is to be seen that the manner in which accident had occurred is not disputed. Since this appeal is filed only for fixing of liability on the insurance company regarding payment of compensation, the other issues which are already held in favour of the respondents/claimants need not be gone into.

12. In **National Insurance Co. Ltd., v. Bommithi Subbhayamma (supra),** the Hon'ble Apex Court, while dealing with the similar situation held that the statutory liability of the insurance company does not cover the gratuitous passenger travelling in a goods vehicle. Hence, the Award made against the insurance company by the High Court therein for death of such passenger was set aside.

13. On the premise that the appellant was travelling as an unauthorized passenger in the auto, which is a goods vehicle, the lower Court dismissed the claim of the appellant in *toto*, which on the face of it, is erroneous.

[4] 2013 (5) ALD 504
[5] 2017 LawSuit (SC) 141

The reason for not making the award against the owner is not seen in the judgment. The owner would nevertheless be liable even if the insurer is exonerated from liability due to violations in the insurance policy. The vicarious liability of the owner will not cease due to violations in the policy. The liability of the owner is independent of the liability of the insurer. The contract between the owner and the insurer is that of indemnity, subject to the owner complying with the conditions of the policy. The violation of a condition of the policy would only deprive the owner of his entitlement for indemnity, but it shall not affect the third parties. (See **B.Rajnikanth v. P.Rajaiah (supra)**).

14. The Tribunal, while deciding the issue regarding fixing of liability of payment of compensation on the insurance company relied on the judgments reported in **M/s. National Insurance Co. Ltd., v. Baljit Kaur**[6] and **New India Assurance Company Ltd., v. Asha Rani**[7], held that the appellant/insurance company is liable to pay the compensation. In **National Insurance Co. Ltd., v. Bommithi Subbhayamma and others (supra),** the Hon'ble Supreme Court held that the Insurance Company is not liable for payment of any compensation for death of a gratuitous passenger travelling in a goods vehicle. However, the

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[6] AIR 2004 Supreme Court 1340
[7] (2003) 2 SCC 223

Hon'ble Supreme Court in **Manuara Khatun v. Mamoni Saikia Mohanty (supra),** held as follows:

> "18. The facts of the case at hand are somewhat identical to the facts of the case mentioned because here also we find that the deceased were found travelling as 'gratuitous passengers' in the offending vehicle and it was for this reason, the insurance companies were exonerated. In Saju P. Paul's case also having held that the victim was "gratuitous passenger", this Court issued directions against the Insurer of the offending vehicle to first satisfy the awarded sum and then to recover the same from the Insured in the same proceedings.
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> 19. Learned counsel for respondent No.3 (United India Insurance Company Ltd.,)however, contended that the facts of the case at hand are not identical to the one involved in the case of Saju P.Paul and hence the law laid down therein cannot be applied to the facts of the case at hand. Learned counsel pointed out that firstly, the awarded compensation in this case is quite substantial and secondly, it is not yet paid to the claimants. Learned counsel also submitted that since the question involved herein is referred to a larger Bench and hence this Court should not give such directions, as prayed by the appellants, against the Insurance Company."

Learned Single Judge of this Court in **Branch Manager, United India Insurance Co., Ltd., Dabagardens, Visakhapatnam v. Dadisetti Ramanamma (supra),** held as follows:

> "22. Insurance company is held not liable to pay compensation. However, the claims Tribunal directed the insurance company to pay the compensation in the first instance and then recover from the owner. Aggrieved thereby, insurance company filed the appeal. Following the decisions of Hon'ble Supreme Court in the case of *Baljith Kaur, Kusum Lata* and *Kamala* mis Court upheld the direction issued by the Claims Tribunal. This Court held that by virtue of the power vested in the Tribunal under Section 168 of the Act, the Tribunal is competent to issue direction to the insurer to satisfy the award in the first instance in favour of the victims/third parties and recover the amounts so paid from the insured. The learned Single Judge followed earlier decision of Division Bench in MACAM No. 2535 and 1661 of 2006."

15. In the instant case also, the accident occurred on 23.02.2000 resulting in death of the deceased on

02.03.2000 while undergoing treatment in the Gandhi Hospital, Secunderabad. The appellants have deposited half of the amount in view of interim order passed by this Court on 30.06.2006. In view of principle of law in the aforesaid precedents, this Court is of the opinion that the appellants-insurance company is liable to pay the balance amount to the respondents/claimants. Therefore, the appellant/insurance company is directed to pay the balance amount of the Award to the respondents/claimants with interest at the rate of 7.5% per annum instead of 9% per annum and recover the same from the owner of the offending vehicle, which involved in the accident, in which the deceased was travelling.

Accordingly, this Appeal is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Appeal, shall stand closed.

A.RAJASHEKER REDDY, J

14-03-2019
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No. 777 of 2005

Date: 14.03.2019

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