

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

+M.A.C.M.A. No.1584 OF 2006

% Delivered on: 06-02-2020

Between:

M/s. United India Insurance Co. Ltd.,
Basheerbagh, Hyderabad. .. Appellant

Vs.

\$ Syed Rehmath Ali & others .. Respondents

! For Appellant : Mr. V. Sambasiva Rao

^ For Respondent Nos.2 to 4 : Mr. Kota Subba Rao

< Gist :

> Head Note :

? Cases Referred :

1. 2006 ACJ 1441
2. 2003 ACJ 1 (SC)
3. 2008 (5) ALD 288 (DB)
4. 2007 ACJ 1934
5. (2001) 8 SCC 748
6. (2000) 1 SCC 237
7. 1999 ACJ 10
8. 2016 (3) ALD 101
9. 2015 ACJ 2232
10. AIR 2017 SC 1204
11. 2017 (5) ALD 104 (SC)
12. 2019 ACJ 2802

THE HON'BLE SRI JUSTICE K. LAKSHMAN**M.A.C.M.A. No.1584 OF 2006****JUDGMENT:**

Appellant - United India Insurance Company Limited preferred the present appeal challenging the Award and Decree dated 22.03.2006 in O.P. No.68 of 2003 passed by the IV Additional Metropolitan Sessions Judge - cum - XVIII Additional Chief Judge, Hyderabad (for short 'the Tribunal').

2. Vide the aforesaid award, the Tribunal has granted an amount of Rs.4,17,500/- (Rupees four lakhs seventeen thousand and five hundred) towards compensation to the petitioners therein payable by respondent Nos.1 and 2 therein jointly and severally with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization as against the claim of Rs.5,50,000/- (Rupees five lakhs and fifty thousand only) made by the petitioners.

3. Heard Mr. V. Sambasiva Rao, learned counsel for the appellant - Insurer and Mr. Kota Subba Rao, learned counsel for respondent Nos.2 to 4 - petitioners.

4. In the present appeal, the appellant - Insurer disputed the very liability itself. According to the learned counsel for the appellant, Ex.B1 - Insurance Policy is in respect of a 'Private Car Policy "A" Liability Only. He would contend that even as per Ex.B-1 policy, in the Schedule of premium, it is specifically mentioned as "third party"

and liability is only to the employee not to a third party. According to him, the Tribunal without considering the said contentions and without appreciating the evidence, the Tribunal awarded compensation fixing liability on the Insurance Company erroneously.

5. In support of the said contentions, the learned counsel for the appellant relied upon the principle in **United India Insurance Co. Ltd. v. Tilak Singh**¹ as regards compensation to be awarded to a pillion rider, gratuitous passenger and fixing of liability on the Insurer and the Apex Court held that Insurer is liable to pay compensation. In the said decision, the Apex Court by referring several other judgments including the principle enunciated in **New India Assurance Company v. Asha Rani**² held that the Insurer is liable to pay in respect of death of person on the principle that though he is a gratuitous passenger, liability would be on the Insurer, and further held that the Insurer has to pay at the first instance and then recover from owner of the vehicle.

6. The learned counsel for the appellant also relied upon another decision rendered by a Division Bench of this Court in **Branch Manager, United India Insurance Co. Ltd., Kamareddy, Nizamabad district v. Kondakotla Saroja**³, wherein the Division Bench of this Court by referring to various judgments of the Apex Court including **Tilak Singh**¹, **Yellwwa v. National Insurance**

¹. 2006 ACJ 1441

². 2003 ACJ 1 (SC)

³. 2008 (5) ALD 288 (DB)

Company⁴, T.V. Jose (Dr.) v. Chacko P.M.⁵, held that where there is no extra premium paid to cover the passengers who travelled in the accident jeep, Insurer cannot be held liable to pay compensation for the death of passenger who travelled in the insured vehicle. It was further held that it is only owner of the vehicle who is liable to satisfy the award and pay compensation amount.

7. By referring to the above said principle held by the Apex Court and the Division Bench of this Court, the learned counsel for the appellant would contend that fixing of liability on the Insurer by the Tribunal is erroneous and that the Insurer is not at all liable to pay any compensation. With the said contentions, the learned counsel for the appellant - Insurer would contend that the Insurance Company is not liable to pay any compensation.

8. *Per contra*, the learned counsel for respondent Nos.2 to 4 - petitioners would submit that Section 145 (g) of the Motor Vehicles Act, 1988 (for short 'Act') deals with definition of 'third party' and it includes the Government. He would further contend that Section 147 of the Act deals with 'requirements of policies and limits of liability'. As per Section 147 (b) (ii) of the Act, a policy of Insurance must be a policy which insured the person or classes of persons specified in the policy to the extent specified in sub-section (2), against the death of or bodily injury to any passenger of a public service vehicle caused by or

⁴. 2007 ACJ 1934

⁵. (2001) 8 SCC 748

arising out of the use of the vehicle in a public place. He would also refer to Section 2 (35) of the Act, which deals with definition of 'public service vehicle' and it means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi cab, a motor cab, contract carriage, and stage carriage.

9. The learned counsel for respondent Nos.2 to 4 referring to the contentions taken by the Insurer in their counter as well as additional counter filed before the Tribunal, would contend that the Insurer did not take any plea disputing its liability and without there-being any specific plea before the Tribunal, Insurer now cannot take such a plea afresh at the appeal stage. He would further contend that the Insurer also examined its employee i.e., Senior Assistant as RW.1, and during his cross-examination, he (RW.1) has categorically admitted as under:

“The policy covers third party risk. The deceased was not the driver of the vehicle nor owner of the vehicle. Except the driver and the owner all the others are the third parties of this policy. The policy does not mention that the inmates of the vehicle are not covered by it. We issue Act policies and comprehensive policies. The terms and conditions of Act policy and comprehensive policy are different. In this case we issued only Act policy. The Act policy covers the third party liability. It is not true to suggest that our Company is liable to pay the compensation. Ex.B2 is annexure of Ex.B1. The vehicle number is not mentioned in Ex.B2. It is

not true to suggest that I am speaking false on behalf of Respondent No.2 to escape the liability.”

10. By referring to the said admissions, the learned counsel for respondent Nos.2 to 4 - claimants would contend that as per the admission of RW.1, Ex.B1 policy covers all third parties to the policy except driver and owner. RW.1 further admitted that the policy does not mention the inmates of vehicle are not covered by the policy. He has further admitted that Ex.B1 policy is an “Act Policy” and it covers third party liability.

11. By referring to the said admissions and also the above said provisions, the learned counsel for respondent Nos.2 to 4 would contend that the Tribunal rightly awarded the compensation by fixing liability on the Insurer and there is no circumstance that warrants interference by this Court in the impugned award.

12. In support of the above said contentions, the learned counsel for respondent Nos.2 to 4 also relied upon the principle held by the Apex Court in **Asha Rani**². In the said case, the Apex Court by referring to its earlier decisions including **New India Assurance Co. Ltd., v. Satpal Singh**⁶ considered the issue as to whether the Insurer is liable to pay compensation to the dependants of the deceased passenger while the deceased passenger was traveling in a goods vehicle and that the vehicle met with an accident, on account of which passenger died, or severe bodily injury and held that in view of the

⁶. (2000) 1 SCC 237

changes in the relevant provisions in 1988 Act *vis-a-vis* 1939 Act, the words "any person" must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of 1988 Act as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor. The Apex Court by referring to Section 147 of the Act further held that owner of a passenger carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid.

13. If the ratio of the Apex Court's decision in **Satpal Singh**⁶ is taken to its logical conclusion, although for such passengers, the owner of goods carriage need not take out an insurance policy, they would be deemed to have been covered under the policy wherefor even no premium is required to be paid. The Apex Court considering the provisions of Section 149 (2) of the Act held that as per the said provision one of the defences which are available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used and that such a statutory defence available to the insurer would be obliterated in view of the decision of the Apex Court in **Satpal Singh**⁶ and accordingly overruled the principle held by it in **Satpal Singh**⁶.

14. The learned counsel for respondent Nos.2 to 4 has also relied upon a decision in **Helen C. Rebello v. Maharashtra State Road Transport Corporation**⁷, wherein the Apex Court held that the Motor Vehicles Act, 1988 is a beneficial legislation and that the intention of the legislature is made more clear by the change of language from what was in Fatal Accidents Act, 1855 and what is brought under Section 110-B of 1939 Act. The Apex Court after referring to various provisions of Motor Vehicles Act, 1988, held that whenever there be two possible interpretations in such Statute then the one which sub-serves the object of legislation, viz., benefit to the subject should be accepted.

15. In **New India Assurance Co. Ltd., Sec.bad v. Rabiya Begum**⁸, this Court held that the risk of gratuitous or fare paid passenger in a private vehicle will not be covered under Act Policy unless extra premium is paid. Even then, this Court by considering the facts of the case fixed the liability on the Insurance Company with a direction to pay the compensation and recover the same from the owner.

16. The learned counsel for respondent Nos.2 to 4 has also relied on decision of this Court in **K. Varalaxmi v. United India Insurance Co. Ltd.**⁹ wherein a Division Bench of this Court held that where two views are possible, the view favourable to the persons for

⁷. 1999 ACJ 10

⁸. 2016 (3) ALD 101

⁹. 2015 ACJ 2232

whose benefit the Act is enacted, has to be taken into consideration to achieve the real object.

17. In **Manuara Khatun v. Rajesh Kr. Singh**¹⁰ relied upon by the learned counsel for respondent Nos.2 to 4, the Apex Court considering the case of private car driven by its driver in a rash and negligent manner and at high speed which resulted in death of the deceased therein, directed the Insurer to pay compensation and recover from the owner of the vehicle.

18. In **New India Assurance C. Ltd. v. Shanti Bopanna**¹¹, the Apex Court considering coverage of third party, held that the deceased therein was not a third party because he was an employee sitting in the car and, therefore, the deceased was indeed a third party being neither the insurer nor the insured.

19. In **Anu Bhanvara v. Iffco-Tokio General Insurance Co. Ltd**¹², the Apex Court by referring several other judgments held that in case of gratuitous passengers, Insurer is liable to pay the compensation at the first instance and shall recover the same from owner of the vehicle.

20. With the above said contentions and decisions, the learned counsel for respondent Nos.2 to 4 would contend that the Tribunal did not commit any error warranting interference by this Court and finally prayed to dismiss the appeal.

¹⁰. AIR 2017 SC 1204

¹¹. 2017 (5) ALD 104 (SC)

¹². 2019 ACJ 2802

21. On perusal of the entire pleadings and documents, it is not in dispute that the deceased - Mohd. Abdul Majeed, a Lab Technician in Farooq Nursing Home Private Limited. On 08.08.2003 at about 2.30 a.m. was proceeding in an Ambassador Car bearing registration No.APW 2628 along with his friend, who was driving the car, from Hyderabad to Jadcherla. When they reached Mudireddypally village of Mahaboobnagar District in Balanagar Mandal, driver of the car drove it in a rash and negligent manner and at high speed and dashed a lorry bearing registration No.TN/28F 2696 from its behind. Due to the said accident, the deceased, who was sitting beside the driver, sustained grievous injuries all over his body and died on the spot. The Police, Balanagar Police Station registered a case in Crime No.160 of 2002 vide Ex.A1 against the driver of the car and after completion of investigation, filed Ex.A-2 - charge sheet.

22. It is contended by the learned counsel for respondent Nos.2 to 4 before the Tribunal that the accident was due to rash and negligent driving of the driver of the car itself and that the deceased was only the bread-winner of his family. On account of his death, his family lost their source of income, love and affection due to untimely death of the deceased and as such, respondent No.1, owner of the vehicle, the appellant being its insurer, are jointly and severally liable to pay compensation.

23. The Insurer filed counter disputing the liability on various grounds including the manner in which the accident had occurred. It

is also contended that the policy is a “private car policy” ‘A’ liability only and that the accident had occurred only due to the negligence driving of the driver of the lorry without observing the Traffic Rules and, therefore, the Lorry driver had contributed to the said accident and as such the Insurer is not liable to pay any compensation as claimed by the petitioners therein.

24. The Tribunal after considering the entire material on record, including the evidence both oral and documentary, gave a finding that the accident had occurred due to rash and negligent driving on the part of the driver of the car. The Tribunal has also fixed the liability on the owner and its insurer jointly and severally and accordingly awarded an amount of Rs.4,17,500/- as compensation with interest at 7.5% per annum thereon as against the claim of Rs.5,50,000/-.

25. On perusal of the documents, more particularly, Exs.A.1 and A.2, which are certified copies of FIR and charge sheet and the deposition of RW.1, it is specifically mentioned in Ex.A.1 - FIR that the accident had occurred due to rash and negligent driving of the driver of the car since the driver drove it at high speed and dashed the lorry from its behind, due to which, the deceased, who was sitting beside the driver, sustained grievous injuries all over his body and died on the spot. The police, after completion of investigation, filed Ex.A-2 charge sheet on the same lines. No contra evidence was placed by the Insurer. As already observed above, the appellant

examined its employee - Senior Assistant as RW.1. He has disputed the liability only on the ground that Ex.B1 policy is only an 'Act Policy'. Even in the counter as well as in the deposition of RW.1, there is no dispute with regard to the accident. In the absence of pleading in the counter and evidence by the appellant, it cannot be said that the accident was due to rash and negligent driving of the driver of the lorry. On the other hand, there is specific evidence that the accident had occurred due to rash and negligent driving of the driver of the car. Therefore, the Tribunal has rightly held that the accident was due to rash and negligent driving of the driver of the car and this Court does not find any error in the said finding.

26. The next question that falls for consideration is as to whether the appellant - Insurer is liable to pay compensation or not. The appellant would contend that it is not liable to pay compensation to respondent Nos.2 to 4 on the ground that Ex.B-1 policy is only an 'Act Policy' with a limited liability. It would further contend that as per the conditions of the said policy, Ex.B2 under the head of 'liability to third parties', it is mentioned as to *subject to Limit of liability as laid down in the schedule hereto, the Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle anywhere in India against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of (i) death of or bodily injury to any person so far as it is necessary to meet the requirements of the Motor Vehicles*

Act, (ii) damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured up to the limit specified in the schedule.

27. By referring Exs.B1 and B2 - policy and its conditions, the learned counsel for the appellant would contend that the Insurer is not liable to pay any compensation. But, the appellant failed to establish that the owner of the vehicle has violated any terms and conditions of Exs.B1 and B2 Policy. In fact, as discussed supra, RW.1 - Senior Assistant of the Insurer himself categorically admitted during cross-examination that the policy covers third party risk. The deceased was neither driver of the vehicle nor its owner. Except driver and owner, all others are third parties to the policy. The policy does not disclose that inmates of the vehicle are not covered by the policy. The 'Act Policy' covers 'third party liability'. In view of the said specific admission made by RW.1 and on perusal of terms and conditions of Exs.B1 and B2, the appellant - Insurer fails to establish that it is not liable to pay compensation in view of violations of terms and conditions of Ex.B1 and B2 by respondent No.1 - owner of the vehicle.

28. As discussed above, the deceased was neither owner of the vehicle nor its driver. In view of the same, and as per the principle held by the Apex Court in the above said decisions, more particularly in **Shanti Bopanna**¹¹, Insurance Company is liable to pay compensation to third party since he is neither insurer nor insured. As

already discussed supra, the Apex Court time and again categorically held that the Motor Vehicles Act is a benevolent legislation and that where two views are possible, the view favourable to the persons for whose benefit the Act is enacted, has to be taken into consideration to achieve the real object and accordingly the same is taken into consideration in favour of respondent Nos.2 to 4.

29. In view of the above said discussion and also the principle held by the Apex Court in the above said decisions, the Tribunal rightly fixed the liability jointly and severally on the owner of the vehicle and its insurer by directing the Insurer to deposit the compensation. Therefore, this Court is satisfied with the said finding and does not find any error in it warranting interference by this court. Thus, the present appeal is devoid of merits and accordingly the same is liable to be dismissed.

30. In the result, the appeal (MACMA No.1584 of 2006) is dismissed confirming the award and decree dated 22.03.2006 in O.P. No.68 of 2003 passed by the Tribunal. However, there shall be no order as to costs.

As a sequel, Miscellaneous Applications, if any, pending in the appeal shall stand closed.

K. LAKSHMAN, J

06th February, 2020

Note:

L.R. Copy to be marked
(B/O) Mgr