IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

MONDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND ELEVEN

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Civil Miscellaneous Appeal No.1984 of 2003

Between:

United India Insurance Co. Ltd., rep. by its
Divisional Manager, Nizamabad .. Appellant

AND

Mohammadi Begum and others .. Respondents

JUDGMENT:

This appeal is directed against the award in O.P. No.837 of

2000 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad, dated 15-04-2002.

Shaik Basheer, husband of the 1st claimant, son of the 2nd claimant and father of claimants 3 to 6, was working as cleaner in bus No.AP 25T 6174 and was travelling as such in the bus on 14-05-2000 when it met with an accident in front of congress bhavan, Nizamabad due to the rash and negligent driving by the driver. Shaik Basheer was run over by the bus and died while undergoing treatment at Government Headquarters Hospital, Nizamabad. He was claimed to be earning Rs.3,000/- per month as salary and Rs.100/- per day as batta at the age of 38 years and the claimants sought for a compensation of Rs.4,00,000/- from the owner and insurer of the bus jointly and severally.

While the owner of the bus remained ex parte before the Tribunal, the insurer put the claimants to strict proof of their claims and contended that the deceased himself was careless and negligent, due to which he fell from the footboard. The insurer also claimed the policy to be not covering the risk of the deceased/cleaner in the absence of payment of any special premium and desired the claim to be negatived.

The Tribunal framed issues about the entitlement of the claimants to compensation and examined P.Ws.1 and 2 and R.W.1 and marked Exs.A.1 to A.6 during the course of enquiry.

The Tribunal concluded that the bus was driven rashly and negligently as proved by the oral evidence of P.W.2 corroborated by the first information report, inquest report, Motor Vehicles Inspector's report and charge-sheet, Exs.A.1 to A.3 and A.5. The Tribunal noted the absence of any contrary evidence for the respondents and the age of the deceased was taken as 42 years as seen from the inquest and post-mortem reports. The income of

the deceased was taken as Rs.3,000/- per month and after deducting one-third out of the same towards the personal expenses of the deceased, the loss of dependency was calculated by applying the multiplier 15. In addition, Rs.15,000/- each towards loss of estate and loss of consortium and Rs.2,500/- towards funeral expenses were awarded making a total of Rs.3,92,500/-. The same was made payable with interest at 9 per cent per annum and proportionate costs. The Tribunal gave directions about apportionment and disbursement of the compensation.

Dealing with the defence about the non-payment of any premium for the cleaner, the Tribunal opined that premium was paid for 35 passengers under the comprehensive policy and that as only one person died due to the injuries in the accident and no other passenger, interpreting the Statute to achieve its main object as laid down by the Apex Court, the insurer has to be made liable.

The insurer challenged the said award in this appeal contending that the insurance policy does not cover the risk of the cleaner and it was stated so on oath by R.W.1 before the Tribunal. Even the quantum of income was assessed without any basis. Hence, the insurer desired the award to be reversed.

Heard Sri Naresh Byrapaneni, learned counsel for the appellant and Sri P. Radhive Reddy, learned counsel for the claimants/respondents 1 to 6.

The point for consideration is the liability of the insurer for the death of the cleaner under the insurance policy in question.

The insurance policy is seen to be referring to the payment of premium in respect of 35 passengers apart from premia which appeared to have been paid in respect of legal liability to paid-driver and/or conductor and for increased third party property damage. In respect of the personal accident to driver, conductor

and cleaner as per endorsement IMT-6, no premium was paid. The oral or documentary evidence on record before the Tribunal does not run contrary to the same in any manner.

When in a similar case, premium was not paid to Hamali who died in the course of his employment due to an accident for tractor and trailer, a learned Judge of this Court following the earlier precedents, opined in **Dudekula Salabee v. R. Siva Sankar Reddy and another**[1] that the question of liability of the insurer does not arise when there was no separate contractual obligation between the insured and the insurer covering the risk of such nature.

That apart, in **New India Assurance Company Limited v. Suraya bee**[2], also relied on by Sri Naresh Byrapaneni, another learned Judge of this Court was seized of an identical question of the liability of the insurer in respect of a cleaner in a lorry who died due to the accident in the course of his employment without the payment of any additional premium. Referring to the relevant provisions and the case law, the learned Judge held that if an extra premium is paid for cleaner, the insurer is required to indemnify the owner of the vehicle against any third party risks. In that case, extra premium was paid for five coolies, while no separate premium was paid for the cleaner and the insurer was held to be not liable to pay compensation. The only distinction herein is that premium was paid for 35 passengers but not for the cleaner.

The claimants attempted to place reliance on **United India Insurance Company Limited, Nizamabad v. Shaik Husain and another**[3]. But the case under consideration of the learned Judge therein was one where in respect of six persons in all including driver and cleaner, a premium of Rs.815/- was collected

under the insurance police in question therein. As the insurance policy specifically referred to the driver and cleaner, the learned Judge held that it was not open to the insurance company to contend that the policy was an Act policy and the cleaner was not covered. The decision, therefore, is distinguishable on facts and on the principle laid down by two other decisions referred to above, the appellant has to succeed.

However, by virtue of the interim orders of this Court in C.M.P. No.2028 of 2003, dated 28-01-2003, half of the decretal amount and costs together with interest thereon was deposited by the appellant and the claimants were permitted to withdraw the same by further orders of this Court on 28-01-2006. To the extent of that amount, the principle of 'pay and recover' should apply and without the necessity of being referred to any separate suit or other legal proceedings, the insurer should be made entitled to recover the same from the owner of the vehicle.

In the result, the award, dated 15-04-2002 in O.P. No.837 of 2000 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad is set aside against the appellant and to the extent of the amount deposited to the credit of the matter by virtue of the interim orders of this Court by the appellant and permitted to be withdrawn by the claimants, the appellant/insurer is entitled to recover the same from the owner of the vehicle/7th respondent herein without the necessity of taking recourse to any other legal proceedings. The appeal is allowed accordingly without costs.

G. BHAVANI PRASAD, J

Date: 31-01-2011

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[1] 2009 ACJ 1053
[2] 2009 (4) ALT 760
[3] 2002 (5) ALD 617