**(2022) 06 TEL CK 0020**

**In the Telangana High Court**

**Case No :** Motor Accident Civil Miscllaneous Appeal No. 670 Of 2021

Oriental Insurance Company Limited APPELLANT

Vs

Akula Narayana And Another RESPONDENT

**Date of Decision :** 08-06-2022

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 147, 163A

**Citation :** (2022) 06 TEL CK 0020

**Hon'ble Judges :** P.Sree Sudha, J

**Bench :** Single Bench

**Advocate :** I Maamu Vani, Jagathpal Reddy, Kasi Reddy

**Final Decision :** Allowed

## Judgement

1. This appeal is filed by the appellant-Insurance Company aggrieved by the order and decree, dated 29.04.2021, passed in O.P.No.3128 of 2014 on the file of the Motor Accidents Claims Tribunal-cum-IIII Additional Chief Judge, City Civil Court, Hyderabad (in short" Claims Tribunal").

For the sake of convenience the parties hereinafter be referred to as arrayed before the trial Court.

2. Before the Claims Tribunal the claimant filed claim petition under Section 163-A of the Motor Vehicles Act (for brevity the M.V.Act) seeking compensation of Rs.5,00,000/- consequent on death of his daughter, 4 years, in a motor vehicle accident. It is stated by the claimant that on 18.05.2014 when his daughter and wife and other relatives were proceeding in a Omni Quails Van bearing No.AP-32-D-0300 towards Toopran side, and when the said vehicle reached near Check Post, Medchal the driver of the said vehicle drove it in a rash and negligent manner and hit an unknown vehicle while it was taking a turn towards Shamirpet, as a result of which there was head on collusion. Due to the impact of the accident, the inmates of Qualis vehicle i.e. deceased-Rajeswari and her mother sustained fatal injuries and died on the spot. The other inmates of the

 

Qualis vehicle and the driver also sustained injuries. Since the accident occurred due to rash and negligent driving of the driver of Tata Qualis vehicle bearing No.AP-32-D-0300, the claimant filed claim petition seeking compensation of Rs.5,00,000/- against the respondents 1 and 2, being the owner and insurer of the said vehicle.

4. Before the Claims Tribunal the 1st respondent-owner of the vehicle stood ex parte, whereas the 2nd respondent-insurer filed counter resisting the claim of the petitioner.

5. Before the Claims Tribunal, PWs.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of the claimant. On behalf of the respondents, RW1 was examined and Exs.B1 and B2 were marked.

6. The Claims Tribunal court, after considering the oral and documentary evidence on record, granted compensation of Rs.3,93,000/- with interest @ 7.5% per annum against the respondents 1 and 2 jointly and severally. Aggrieved by the same, the appellant-insurance company preferred the present appeal.

7. The appellant-insurer mainly contended that the policy was an Act policy issued for a private car, as such the risk of occupants of private car does not cover. Except the driver, owner and cleaner, all others are third parties to the policy. Under statutory liability the insurer covers only third party liability and the passengers carried in a public service vehicle, and the passengers of a private vehicle does not cover. In support of their contention, the learned Counsel for the appellant relied on decisions reported in (1) United India Insurance Company Ltd., Vs. Syed Rehamat Ali and (2) Chacko Vs. Jose and united Insurance Company Vs. Tilak Singh, in which the Hon’ble Supreme Court held that the occupants of a private vehicle as well as pillion rider of a two wheeler were not covered by the policy and the insurance company is not liable to pay the compensation, but the trial Court erred in fastening the liability on the insurance company.

7. Heard both the Counsel and perused the record and also order of the trial Court.

8. Ex.B1 is the copy of the policy and Ex.B2 is the attested copy of terms and conditions of the policy. The Claims Tribunal held that the vehicle was passengers vehicle and the deceased was a third party, as such insurance company is liable to pay compensation.

9. PW1 is the father of the deceased and PW2 is the brother-in-law of PW1 and brother of the complainant. According to the PW1, nine persons were travelling in the offending vehicle against its seating capacity. It was suggested to PW1 that since more than nine persons were travelling in the car against the seating capacity the 2nd respondent is not liable to pay compensation. PW2 is the brother of the complainant and eye witness to the accident. PW1 stated that in

 

the complaint it is stated that the accident was occurred due to hit and run of one unknown vehicle, but not due to rash and negligence driving of the driver of Qualis. They have not filed charge sheet to show that the driver of the Qualis was at fault. PW2 is the brother-in-law of PW1 and brother of the complainant.

9. RW1 is the Administrative Officer of appellant-insurance company. He stated the policy was in existence as on the date of accident, and it was issued in respect of Omini Qualis van bearing No.AP-32-D-0300 under private car liability and no additional premium was paid to cover the liability of the passengers. In the complaint dated 19.05.2014 it was stated that while the deceased was proceeding in Qualis one unknown vehicle hit the Qualis and ran away and there was no negligence on the part of the driver of the Qualis, as such petition itself under Section 163-A of the M.V. Act is not maintainable and even in the final report it was stated as "un-detected". In the cross-examination he clearly stated that even if they have collected additional premium it will not cover risk of inmates the policy. The seating capacity of the Qualis car was 4 + 1 and premium collected is Rs.4,016/- and Ex.B1 was issued in respect of private car under an Act policy. They have collected additional premium for driver, conductor and cleaner and also collected a sum of Rs.100/- from owner of the vehicle as P.A for owner and driver. Police had not recoded the statement of the complainant.

11. The learned Counsel for the appellant-insurance also relied on the following decisions:

i). United India Insurance Company Limited Vs. Tilak Singh and others, reported in (2006) 4 Supreme Court cases, 404, wherein it was held that:

"An Insurance policy under Section 147 does not cover the risk of death or injury to gratuitous passengers carried in a private vehicle"

ii. Ramashary Singh Vs. New India Assurance Company Limited, reported in (2003) 10, Supreme Court cases, 664, wherein it was held that:

"Under Section 147 the liability of insurer in respect of third party risk, the policy covers only the persons or classes of persons specified in the policy. Moreover, comprehensive policy covers loss sustained by the insured up to the insured amount irrespective of the actual loss suffered"

10. The learned Counsel for the respondent No.1-claimant also argued that even if the policy was not valid the insurance company is liable to pay the amount and then they are at liberty to recover from the owner of the vehicle and thus the order of the trial court is on proper appreciation of facts and needs no interference.

11. The learned Counsel for the respondent No.1-claimant, also relied on the following citation:

National Insurance Company Ltd., Vs. Challa Upender Rao and others, reported in (2004) 8, SCC 517, wherein it was held that:

"Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In cases there is any default it shall be open to the executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insurer. In the instant case, considering the quantum involved it is in the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured"

12. Admittedly the deceased was travelling in Qualis, but the accident occurred due to rash and negligent driving of the unknown vehicle and it is a clear case of hit and run and even in the final report it was stated as "undetected'. There is no negligence on the part of the driver of Qualis Vehicle as per the evidence on record. The appellant-insurance company clearly stated that it is an Act policy and additional premium was not paid for the passengers. The passengers in a private vehicle does not cover under statutory liability and they may be exonerated from paying the compensation.

13. In view of the above discussions and legal position this Court finds that the Insurance Company is not liable to pay compensation to the claimant, when there is clear breach of terms and conditions of policy pay and recovery cannot be ordered.

14. Accordingly, the appeal is allowed and the impugned order dated.29.04.2021 passed by the Claims Tribunal in O.P.No.3128 of 2014 is set aside against the appellant-insurance company and it is exonerated from the liability of paying the compensation.

Miscellaneous petitions, if any, pending shall stand closed.

 