**(1982) 03 AP CK 0001**

**Andhra Pradesh High Court**

**Case No:** None

New India Assurance Co. Ltd. — APPELLANT

Vs

Shaik Jaffer and Others — RESPONDENT

**Date of Decision:** March 2, 1982

**Acts Referred:**

- Andhra Pradesh Motor Vehicles Rules, 1964 - Rule 213
- Motor Vehicles Act, 1939 - Section 96(2)

**Citation:** (1984) 56 CompCas 79

**Hon'ble Judges:** B.P. Jeevan Reddy, J

**Bench:** Single Bench

**Advocate:** I.A. Naidu, for the Appellant; P. Venkatamuni Reddy, for the Respondent

**Judgement**

Jeevan Reddy, J.

1. These four civil miscellaneour appeals are preferred by the insurance company, questioning the award of the Motor Accidents Claims Tribunal. The Contention of Mr. I.A.Naidu is that, on the findings recorded by the Tribunal, the insurances company could not have been liable for paying the compensation awarded. It is necessary to state of few facts.

2. On December 14, 1978, the petitioner in O.P.No. 236/1978 (first REspondents in C.M.A. No. 313/80) was driving the lorry APQ 3547, loaded with gammaxine bags. He was transporting them from Doopadu railway station to Nellore. While going on the Bombay-Nellor High Road, near Badvel town, he met a party of music-artists. They were stranded for want of transport. At their entreaty, the driver agreed to accommodate them in the lorry and, accordingly they got into the lorry. When the lorry reached 61 km. near Konna Samudram Croos-roads, within D.C.Palli Police Station limits, the lorry dashed against a plamyra treem, and got damaged, The inmates, including driver and three music artists who got into the lorry near Badvel town, were also injured. Claims were laid by the driver, as well as the said three

arises for compensation both against the owner of the vehicles and the insurances company. The Tribunal found that the three music artist''s having paid the hire or the charges, as the case may be, for travailing in the lorry, must be held to be persons carried for hire or reward as, the case may be (it found that they were carried in the cabin of the lorry), and purporting to follow the Full Bench decisions of the Gujarat High Court in Ambaben v. ACJ 292, the Tribunal held the insurance company liable for paying the amounts awarded by it. Hence these appeals.

3. So far as C.M.A. No. 313 of 1980 is concerned, the claimant is the driver of the lorry, and there can hardly be any dispute about the liability of the insurance company to pay compensation to him. No doubt, such compensation has to be determined having regard top prove. (ui) to cl.(b) sub-s. (1) of s. 95. It is not complained before me that the determination of the quantum of compensation has not been done in accordance with the said proviso. Therefore, so far as C.M.A. No. 313 of 1980 is concerned, there can be no legitimate grievance. IT is, accordingly, dismissed with costs.

4. The main contention of Mr. I.A.Naidu, the learned counsel for the appellant-insurance company is that, so far as the three music artistes are concerned, they were not the employees of the owner of the vehicle, nor were they the owners of the goods, or servants or agent of the owner of the goods being transported in the lorry. they were taken as passengers by the driver contrary to the conditions of the permit relating to the lorry (goods vehicles). He submitted that, according to the express terms of the insurance policy, taking of such passengers is prohibited. If so, it is argued, the insurance-company cannot be made liable for the compensation awarded.

5. It is now well settled that the only exceptions which an insurance company can plead in a claim for compensation are those set out in sub-s. (2) of s. 96 of the the M.V. Act, 1939. Mr. I.A.Naidu relieds upon sub-clause (i)(c), according in clause (b) sub-s. (2). In other words, his contention is that there has been a breach of a specified condition of the policy, excluding the use of the lorry in question for conveyance of passengers for hire or reward. I am inclined to uphold this contention. The clause and the sub-clause which are relevant, and are attracted in the present case, are the following :

"..... an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely :.....

(b) that there has been a breach of a specified condition of the policy. being one of the following conditions, namely :

(i) a condition excluding the use of the vehicle .....

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle ....."

6. According to clause (b) of sub-s. (2), violation of any and every conditions of a policy does not exonerate the insurer from liability the act. The violation must be of a specific condition of a specified nature. Since, in this case, s. 96(2)(b)(i)(C) is being invoked, it is necessary to establish two things, viz., (i) that there has been a violation of specific condition of the policy,and (ii) that the transport vehicle has been used for a purpose not allowed by its permit.

7. Before proceeding to deal with these question, it is necessary to refer to some more provisions of the Act and the Rules. The expression "transport vehicle" is defined by clause (33) of s. 2, to mean "a public service vehicles, or a goods vehicle". "Goods vehicle" is defined by clause (8) of s. 2, to means "any motor vehicle constructed or adopted for use for the carriage of goods or any motor vehicle not so constured or adopted when used for the carriage of goods, or any motor vehicle not so constructed or adopted when used for the carriage of goods solely or in addition to passengers."

8. Rule , Part V, of the A.P.Motor Vehicles Rules, sets out the additional conditions applicable to goods vehicles, Conditions (iv) and (v) are relevant for the present purpose, and they read as follows :

"(iv) No other person shall be carried in the cab of the vehicle beyond the number for which there is seating accommodation at the rate of millimeters measured alone the seat, excluding the space reserved for the driver, for each person.

(v) not more than six persons in all in addition to the driver shall be carried in the vehicle except with the permission of the transport authority."

9. Admittedly, the vehicle in question is a goods vehicle constructed for the carriage of goods. It is, no doubt, true that it is entitled to carry not more than six persons in all, in addition to the driver, in the vehicle; but, the six persons in all, in addition to the driver, in the vehicle; but, the six persons mentioned therein must be either the employees of the owner of the vehicle, or the owner of the goods, or his agents or servants, as the case may be. IT is not open to the driver to take passengers for hire or reward. It is not brought to my notice that the permit for a goods vehicle issued under the Act entitles such a goods vehicle to carry passengers for hire or rawer. It is thus clear that under the permit issued for the vehicle in question under the M.V. Act, 1939, it is not permitted to carry passengers for hire or reward.

10. Now, coming to the policy issued by the appellant, it expressly states that "the policy does not cover.....(3) use for the conveyance of passengers for hire or reward ....." Thus, in this case, both the conditions contemplated by the relevant sub-clause in sub-s. (2) of s.. 96 are satisfied and, there-fore, the insurance company cannot be held liable.

11. It is, however, necessary to briefly refer to certain decisions relied upon by by both the counsel before me. The first decision relied upon by the learned counsel for the respondent-claimants is of a bench of this court in M. Suryanarayana v. G. Satyavati [1979] 1 APLJ 401. That was a case where the owner of the goods travelling in the lorry along with the goods, m et with a an accident, and claimed compensation on that account. On behalf of the insurance company, and objection was raised that he insurance company was not liable, inasmusch as the injured person (owner of the goods transported in the vehicle) was not a person carried for hire or reward, or by reason of or in pursuance of a contract of employment. It was argued that the owner of the goods who travels in a goods vehicle is not entitled to compensation for any accident which causes injury or death. This argument was rejected by the Bench holding that the claimant in that case, who was the owner of the goods being transported in the lorry, was accompanying the goods as in the normal situation and that, his travelling in the vehicle cannot be said to be unauthorised or prohibited by the permit, or by the policy. So far as the permit is concerned, it was observed, with reference to condition (v) in r. 213, Pt. V., that six persons in all can be carried in addition to the driver, in a goods vehicle and that the owner of the goods was within the permitted category. So far as the policy is concerned, the Bench observed that the insurance company failed to produce the policy and, therefore, it cannot be said whether the policy prohibited the owner of the good being carried in the vehicle. But, in my opinion, condition (v) of rule 213, Pt. V. cannot be extended to passengers who have nothing to do either with the owner of the vehicle, or with the owner of the goods, in the sense that they are not the employees of the owner of the vehicle, nor are thy the owners, or servants or agents of the owner/owners of the good carried in the vehicle.

12. The next decision relied upon is of Venkatarama Sastry J, in The Hindusthan Ideal Insurance Corporation Ltd. Vs. Manne Chimperamma and Others, . Following the decision render by various High Court the learned judge observed in para. 15 of [1974] ACJ and p. 122 of AIR 1974.

13. "All the above four decisions are directly in point and conclude the question in this case. The principle behind all these decisions is that under proviso to section 95(1)(b) of the Act, the insurance company is liable to meet the liability in respect of death or bodily injury to a passenger only if he has been carried for hire or reward or by reasons of or in pursuance of a contract of employment. If both these things are absent, then the insurance company escapes the liability". That was also a case where the aliment was the over of the goods carried in the vehicle. The learned judge, however, held that, since the owner of the goods cannot be said to be a persons carried of hire or reward, to insurance company canoe be held liable. This decision must, however, be read and understood subject to the subsequent Bench decision, referred to above. In any events, as I have stated above, since the permit of the vehicle prohibits the carrying of passengers for hire or reward, which is also prohibited by the policy the insurance company cannot be made liable in these

matters.

14. Learned counsel for the respondents-claimants then relied upon the decision of a single Judge in Sunder lal v. Om Singh [1978] ACJ 267 , but I find that this decision does not deal with the liability of the insurance company nor, with ss. 95 and 96 of the Act.

15. The next decision relied upon is that of a Full Bench of the Madhya Pradesh High Court, in Narayanlal and Others Vs. Rukhmanibai and Others, . THat again is not a case dealing with the liability of an insurance company with refers to ss., 95. and 96. the decisions deals only with the liability of an owner. It washed that since there was express prohibition by the master from giving lift to any one in the truck, the owner is liable to pay compensation to the passengers who were giver a lift by the driver no doubt contrary to the express rules framed under the Act.

16. The other decision railed upon by the learned counsel for the respondents-claimants is Jiwan Dass Roshan Lal Vs. Karnail Singh and Others, . This against is not a case dealing with the liability of an insurance company, but that of the owner alone. The principle of this decision however, seems to run counter to the decision of the Full bench of the Madhya Pradesh High Court'' but, it is not necessary to deal with the said aspect definitively for the purpose of these appeals.

17. For the above, reasons, the three appeals, viz., C.M.As. Nos. 314 to 316 of 1980, are allowed; but, in the circumstances, without costs. The liability of the owner of the vehicle, however, remains undisturbed and it shall be open to the claimants to proceed against the owner of the vehicle for the realisation of the compensation awarded to them. There shall be no order as to costs in these three appeals.