HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1186 of 2009

JUDGMENT:

Challenging the Award dated 02-03-2009 in M.V.O.P.No. 147 of 2007 passed by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Khammam (for short 'the Tribunal'), the first respondent, who is the owner of the offending Tractor bearing No. AP 20 W 4735, filed the instant MACMA.

2 a) The factual matrix of the case is thus:

On 23-03-2006 at about 08.00 pm the deceased—Konduru Rambabu was driving the tractor bearing No. AP 20 W 4735 and trailor bearing No. AP 20 W 4736 from Yellandu to Kothagudem and when he reached the turning near Hemachandrapuram gutta, a buffalo came in opposite direction and to avoid it, the deceased applied sudden brake, due to which, the tractor lost control and turned turtle. As a result, the deceased fell down from the tractor and suffered grievous injuries and died on the spot. The claimants, who are the wife and mother of the deceased, filed M.V.O.P.No.147 of 2007 under Section 166 of M.V.Act, 1988 (for short' the M.V.Act') against the respondent Nos. 1 and 2, who are the owner and insurer of the offending vehicle and claimed Rs.4,00,000/- as compensation under different heads as mentioned in the O.P.

b) The first respondent remained *ex parte*.

c) Second respondent/Insurance Company filed Counter and opposed the claim petition denying the material averments made in the claim petition. R.2 urged that the petitioners/claimants will be put to strict of their claim averments.

c) During trial, PWs.1 and 2 were examined and Exs.A1 to 8 were marked on behalf of claimants. Policy copy filed by the respondent

No.2 was marked as Ex.B.1.

d) On appreciation of oral and documentary evidence, the Tribunal awarded compensation of Rs.3,00,000/- with interest at 7.5% p.a. Sofar as the liability is concerned, the Tribunal fixed the liability on first respondent being the owner of the vehicle. Sofar as the second respondent/Insurance Company is concerned, the Tribunal having accepted the contention of second respondent that under Ex.B.1 no premium has been paid by R.1 to cover the risk of the driver, exempted the second respondent from the liability. Thus, the Tribunal directed the first respondent alone to pay the compensation as awarded by it.

Hence, the instant appeal by the first respondent.

3. The parties in the appeal are referred to as they stood before the Tribunal.

4 . Heard arguments of Sri Y. Pulla Rao, learned counsel for Appellant/first respondent, Sri Y. Sudhakar, Advocate for respondent Nos. 1 and 2/claimants and Sri Ravishankar Jandhyala, learned counsel for respondent No.3/Insurance Company.

5) Fulminating the Award, the learned counsel for appellant submitted that the Tribunal misread the Ex.B.1-Policy and observed as if the appellant did not pay separate premium to cover the risk of his driver. Pointing out the page No.3 of Ex.B.1, learned counsel, argued that the appellant/owner paid premium of Rs.25/- to cover the risk of the paid driver and therefore, the risk of the deceased is very much covered under Ex.B.1—Policy. He, thus, prayed to fasten the liability on the Insurance Company also.

6) Opposing the appeal, the learned counsel for Insurance Company, argued that in page No.3 of Ex.B.1 under the heading P-A Benefits, no payment was made to the paid driver/cleaner and so, the Tribunal rightly exempted the Insurance Company from its liability and

therefore, there are no merits in this appeal and hence, the appeal may be dismissed.

7) Learned counsel for respondent Nos.1 and 2/claimants supported the arguments of the learned counsel for appellant.

8) In the light of above rival arguments, the point for determination is:

"Whether the Award of the Tribunal insofar as exempting the Insurance Company from its liability is correct and sustainable?"

9) **POINT:** The accident, involvement of the Tractor bearing No. AP 20 W 4735 and the deceased being its driver meeting his death in the resultant accident are not in dispute. The bone of contention is about the coverage of policy to the risk of the deceased or not. In the light of the above rival arguments, I perused Ex.B.1—Policy. There is no dispute about the issuance of Ex.B.1—Policy and its validity as on the date of accident. In Page No.3 under the heading P-A Benefits, three separate Clauses i.e., a, b and c, are mentioned. Clause(a) is styled as " PA for Paid Driver/Cleaner(Endt.IMT-17) Rs.0.00". Probably basing on this, the Tribunal held that no separate premium is paid to give coverage to the risk of the paid driver and exempted the Insurance Company from its liability. However, that is not end of the matter. In the very same Ex.B.1 under the heading "Legal Liability", Clause(d) is mentioned as follows: " Legal Liability to paid Driver/Conductor/Cleaner(Endt.IMT-28) Rs.25/-. So, the above mentioned sentence clearly shows that to meet the legal liability to the paid Driver/Conductor/Cleaner of the vehicle, the Appellant paid premium of Rs.25/-. Therefore, it cannot be said that no premium was paid by him to give coverage to his driver i.e., the deceased. Hence, it is clear that Ex.B.1—Policy covers the risk of the deceased, who was the paid driver under the appellant. Therefore, on a conspectus of entire evidence, the appeal has to be allowed.

10) In the result, the appeal is allowed and the Award of the Tribunal

in M.V.O.P.No.147 of 2007 exempting the second respondent/Insurance Company from its liability is set aside and it is held that respondent Nos. 1 and 2 in the OP are jointly and severally liable to pay the compensation awarded by the Tribunal.

b) The respondent Nos. 1 and 2 are directed to deposit the compensation amount with interest at 7.5% P.A., within two months from the date of this Judgment, failing which, execution can be taken against them.

(c) No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 09.07.2015

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HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

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Dt. 09.07.2015

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