THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.436 of 2009

JUDGMENT:

Aggrieved by the Award dated 25.06.2004 in M.V.O.P.No.1257 of 2000 passed by the Chairman, MACT-cum-I Additional District Judge, Nalgonda (for short "the Tribunal"), the 2nd respondent in the O.P/United India Insurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that on 19.01.2000 at about 9.30 AM, when the deceased—Kotha Tirupatamma was travelling in the tractor bearing No.DLA 1509 M & M as agricultural labourer to collect the cotton in the field of R1 and when it reached near the turning of Nagarjunasagar Project canal; the driver of the tractor drove in a rash and negligent manner thereby tractor fell down in the canal and the deceased along with others sustained injuries and while undergoing treatment in Government Civil Hospital, Huzurnagar she succumbed to injuries. It is averred that the accident was occurred due to the fault of the driver of tractor. On these pleas, the claimants filed M.V.O.P.No.1257 of 2000 under Section 166 of Motor Vehicles Act (for short "MV Act") and claimed Rs.2,00,000/- as compensation against respondents 1 and 2, who are the owner and insurer of the offending tractor.

b) Respondent No.2/Insurance Company filed counter and opposed the claim denying all the material averments made in the petition and urged to put the claimants in strict proof of the same. R.2 disowned its liability on the ground that deceased travelled in the offending tractor as unauthorised passenger. Finally, R.2 contended that the compensation claimed was high and excessive and thus prayed to dismiss the O.P.

c) During trial, PWs.1 and 2 were examined and Exs.A.1 to A5 were marked on behalf of claimants. RW.1 was examined and Ex.B.1 was marked on behalf of 2nd respondent.

d) Award shows, the Tribunal after considering the oral and documentary evidence held that the driver of the offending tractor was responsible for the accident. Sofaras quantum of compensation is concerned, the Tribunal awarded compensation of Rs.1,78,200/- with proportionate costs and interest at 9% p.a under different heads as follows:

Loss of estate		Rs. 1,63,200-00
Non-pecuniary damages		15,000-00
	Total:	Rs.1,78,200=00

Hence, the appeal by United India Insurance Company Limited.

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

4) Heard arguments of Sri Naresh Byrapaneni, learned counsel for appellant/Insurance Company. None appeared for R4/owner though represented by Sri V. Brahmaiah Chowdary, learned counsel. Notice sent to R1 to R3 was not served, as no such person available in the village. Hence, notice was served on the learned counsel appearing for claimants before the Tribunal but there is no representation.

5) Impugning the award, learned counsel for appellant argued that the Tribunal erred in fastening liability on the Insurance Company just because the tractor-cum-trailer was insured with the appellant and was used for agricultural purpose at the relevant time of accident. He pointed that these aspects are not sufficient to fix liability on the Insurance Company because the deceased and others travelled in the capacity of coolies as per the claimants and as gratuitous passengers as per the Insurance Company. In either case their risk was not covered under the terms of policy since no premium was paid by the owner to cover the risk of either coolies or gratuitous passengers. This aspect was vividly and clearly spoken by RW1 with reference to Ex.B1—policy. Hence, irrespective of policy was in force and the vehicle was used for agricultural purpose, the risk of deceased and others would not be covered but the Tribunal erroneously fixed liability on the Insurance Company. He thus prayed to allow

the appeal and exonerate the Insurance Company.

6) In the light of above arguments, the point for determination in this appeal is:

“Whether the Tribunal was right in fixing liability on the Insurance Company?”

7) **POINT**: Upon hearing him and perusal of record and award, this Court finds considerable force in the said argument. As per the evidence of PW1, deceased and some others travelled in the tractor-cum-trailer of 4th respondent to collect cotton from his cotton fields. So, as per claimants the deceased and others travelled in the capacity of labourers. The Tribunal in its award observed that RW1 admitted that Ex.B1 policy was in force and it was used for agricultural purpose at the time of accident. Basing on this admission and relying upon the decision reported in ***Oriental Insurance Company Limited, Kothagudem, Khammam vs. Ponnam Laxmaiah and others***[1] the Tribunal fixed liability on the Insurance Company along with owner. However, the contention of Insurance Company as stated supra is that merely the policy was in force and the vehicle was used for agricultural purpose are not sufficient to fasten the liability on it unless the policy covers the risk of alleged labourers. I perused Ex.B1—policy. It is an Act policy and premium was paid for tractor, trailer and driver. As rightly argued, no premium was paid for the labourers. Therefore, they shall be

treated as gratuitous/unauthorized passengers with reference to crime vehicle. Since no premium was paid, the Insurance Company cannot be fastened with liability. Though the Tribunal relied on ***Ponnam Laxmaiah***'s case (1 supra) it will not help the cause of the claimants due to change in law.

8) In ***Ponnam Laxmaiah***'s case (1 supra) when the tractor-cum-trailer was carrying agricultural coolies for agricultural purpose, it turned turtle and one coolie died and four others sustained injuries. In those circumstances, Tribunal awarded compensation against Insurance Company. In the appeal a learned single Judge of this High Court relying upon the decision of the Supreme Court in ***New India Assurance Company v. Satpal Singh*** [2] wherein it was held that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle no matter that the vehicle is of any type or class and the Insurance Company is liable to pay compensation in respect of gratuitous passengers under the new Act, had held that policy covers the risk of deceased and dismissed the appeal filed by the Insurance Company. No doubt the judgment in ***Ponnam Laxmaiah***'s case(1 supra) was rendered basing on the law prevailed in ***Satpal Singh***'s case (2 supra) by then. However, subsequently the judgment in ***Satpal Singh***'s case (2 supra) was overruled by Apex Court in ***New India Assurance Co. Ltd. vs. Asha Rani and others***[3].

a) Thus, the precedential law on gratuitous/unauthorized passengers in a goods vehicle was changed with the passage of time. In ***Satpal Singh***'s case (2 supra) (decided on 02.12.1999), the facts were that a 10 year old girl while traveling in a truck died on 11.03.1990 when the truck met with accident. The Insurance Company disowned its liability on the contention that the deceased was a gratuitous passenger. It was in that context declining its plea, Hon'ble Supreme Court held thus:

> *"The result is that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-à-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force."*

b) Thus in the above decision, the Supreme Court with reference to Section 147 of Motor Vehicles Act, 1988 (as it stood before amendment w.e.f 14.11.1994) held that the risk of a gratuitous passenger in a goods vehicle was covered. However it must be said that the above decision was overruled subsequently.

c) In ***New India Assurance Company Limited vs. Asha Rani and others*** (3 Supra) (decided on 03.12.2002), the Supreme Court had an occasion to consider the correctness of its earlier decision rendered in ***Satpal Singh***'s case (2 Supra). In this decision, it was held that the judgment in ***Satpal Singh***'s case (2 Supra) was not correct and accordingly overruled. A number of reasons were quoted to come to the said conclusion. Precisely, in this decision the judgment of the ***Satpal Singh***'s case (2 supra) was found fault on the ground that the said judgment went on a wrong premise that the phrase "any person" used in Section 147(1)(b)(i) of Motor Vehicles Act includes gratuitous passengers also but that is not so and the meaning of the words "any person" must be attributed to "a third party". Thus the decision in ***Satpal Singh***'s case (2 supra) was overruled.

d) Hence, it must be noted that by the time the Tribunal pronounced the judgment in O.P.No.1257/2000 on 25.06.2004, the decision in ***Satpal Singh***'s case (2 supra) was already overruled in ***Asha Rani***'s case(3 supra). As such, the award of the Tribunal fixing liability on Insurance Company cannot be countenanced. This point is answered accordingly.

9) In the result, this MACMA is allowed and the appellant/Insurance Company is exonerated from its liability with a direction that compensation awarded by the Tribunal shall be payable by the owner/ first respondent in the O.P only. However, pending appeal, if the appellant/ Insurance has paid any compensation to the claimants, it shall recover the same from the owner/first respondent in the O.P but not from the claimants. No costs in the appeal.

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

U.DURGA PRASAD RAO, J

Date: 17.03.2015

<u>Note</u>: L.R. copy to be marked: Yes/No

scs

[1] 2000 (2) ALT 568

[2] AIR 2000 SC 235

[3] 2002 (8) Supreme 594 = 2003 ACJ 1 (SC)