HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A.No.466 of 2006

JUDGMENT:

The petitioners in M.V.O.P.No.888 of 2002 on the file of Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge (FTC), Krishna District at Vijayawada, are the present appellants. Aggrieved by the order dated 28.11.2005, whereby and whereunder the Tribunal has granted a sum of Rs.1,59,500/- with interest @ 7.5% per annum fastening liability on respondent Nos.1 and 2, who are the driver and owner of the accident vehicle, while dismissing the claim against the 3rd respondent-Oriental Insurance Company Limited, Gudivada on the ground that the deceased/Pullaiah was travelling as gratuitous passenger, the instant appeal is preferred.

2. The appellants herein are the petitioners in the original petition before the Tribunal, while respondent Nos.1 to 3 herein, who are driver, owner and insurer of the tractor bearing No.AP-16-V-7120 respectively, were respondent Nos.1 to 3 respectively and respondent Nos.4 to 7 herein were respondent Nos.4 to 7 respectively.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that the said Pullaiah/deceased along with one Kondalu sat on the tractor bearing No.AP-16-V-7120 on 28.07.2002, which was proceeding on canal bund towards the road. When it reached near the field of Nagaratnam, since the 1st respondent-driver of the tractor, drove it in a rash and negligent manner without observing the telephone wires, the telephone wires blocked the neck of the 1st respondent, as a result he left the steering of the tractor, it turned upside down by falling into the field of Nagaratnam. Both of them fallen under the tractor and received serious injuries and succumbed to the injuries later. A crime was registered by the SHO in crime No.144 of 2002 against the driver of the tractor. Since respondent Nos.1 to 3, driver, owner and insurer of the said tractor, the petitioners while seeking enhancement from them, also added respondent Nos.4 to 7, who are

other heirs of the deceased and the 1st petitioner, on the ground that they did not join to lay the instant claim. The petitioners sought Rs.1,50,000/- as compensation.

5. Respondent Nos.1 to 3 filed written statements opposing the claim, requiring the petitioners to prove the material allegations mentioned in the petition. They took various pleas. The 3rd respondent-insurance company has taken a specific plea that both the deceased and other person were travelling unauthorizedly and, therefore, no liability can be fastened on the insurance company and sought to dismiss the claim in so far as insurance company is concerned.

6. Basing on the above pleadings, the Tribunal framed four issues about the responsibility for the accident. During enquiry, the 1st petitioner herself was examined as P.W.1 besides examining one Srinivasa Rao as PW.2 and marked Exs.A.1 to A.4. On behalf of the respondents, S.S.Chandra Sekhar was examined as RW.1 and marked Exs.B.1 and B.2.

7. The Tribunal, while deciding issue Nos.1 and 2 in favour of the petitioners, recorded a definite finding that the

3rd respondent-insurance company is not liable to pay compensation in view of the decisions in **Vachala v. V.R.Kumar** and in **National Insurance Company Limited v. D.Subbayamma**. On issue No.3, the Tribunal while taking notional income at Rs.15,000/- per annum, deducted 1/3rd towards personal expenses of the deceased and applied multiplier '15', arrived at a total sum of Rs.1,59,500/- by granting Rs.2,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate. However, the Tribunal has not recorded finding as to entitlement or otherwise of respective shares to respondent Nos.4 to 7, who are major sons and a married daughter respectively, as can be seen from the description occurring in the cause title of the original petition.

8. Aggrieved by the aforementioned order, more particularly, dismissal of their claim against the 3rd respondent-insurance company, the instant appeal is preferred raising relevant grounds in the grounds of appeal.

9. Heard Sri Ch. Ramesh Babu, learned counsel for appellants and Smt. SAV Ratnam, learned counsel for the 3rd respondent-insurance company. It is stated that respondent Nos.1, 2 & 4 to 7 are not necessary parties.

10. Learned counsel for the appellants placed a copy of judgment of this Court in M.A.C.M.A.No.619 of 2005 dated 05.10.2012. The claim therein relates to deceased-Lakka Kondalu, who was the other deceased in the same accident referred to in the above. Since, the Tribunal while passing the order and decree on 28.10.2004, while determining compensation at Rs.2,04,000/-, besides the same, a sum of Rs.41,000/- towards medical expenses and Rs.30,000/- towards loss of consortium to the 1st petitioner, fastened liability on respondent Nos.1 to 3, incidentally the same insurance company is also the respondent herein. Aggrieved by the said order and decree, the 3rd respondent therein preferred the aforementioned M.A.C.M.A.No.619 of 2005. This Court while considering the nature of the policy marked as Ex.B.1 therein, recorded a finding that it is a B-Comprehensive policy and referring to the effect thereof in Paras 11 to 14, dismissed the appeal, observing thus:

> "11. It is the case of the claimants that the deceased was an agricultural cooli and the accident took place while returning after attending to agricultural operations. The insurance policy which is produced on record is B-comprehensive. A perusal of Ex.B-1-the insurance policy clearly reveals that additional premium of Rs.162-25 was paid for use of vehicle for private purpose and Rs.127/- for loading of trailer under liability to public and premium of Rs.340-63 was paid to use the vehicle for private purpose and premium of Rs.150-50 was paid for use of trailer under Category (A) own damage-Basic. The terms of policy No.3364/2002 reads as under:
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> (i) The insurer will indemnify the insured against his legal liability under Common Law and Statutory Liability under the Fatal Accidents Act, 1855 in respect of death of or bodily injury to any person not being an employee of the insured not carried for hire or reward, whilst being carried in or upon or entering or mounting or alighting from any motor vehicle described in the Schedule to this policy.
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> (ii) This policy shall be operative whilst any vehicle described in the schedule hereto is being used by the insured or by any other person with the permission of the insured for social , domestic or pleasure purpose.
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> Whilist any such vehicle is being so used the insurer till in terms and subject to the limitations of and for the purpose of Section II of this policy treat as though he were the Insured person using such vehicle provided that such person-

1. is not entitled to indemnity under any other policy.
2. Shall as though he were the insured observed, fulfil and be subject to the terms, provisions, conditions and endorsement of this policy in so far as they apply.
3. Has not been refused to motor vehicle insurance or continuance thereof by any insurer.

Subject otherwise to the terms and conditions limitations and exceptions of this Policy.

ENDT.No.MV/IMT.36=Agricultural and forestry vehicles-Extended cover."

12. The policy though issued for a tractor and trailer covers the risk when the vehicle is used not only for agricultural purpose but also for private purpose. A separate premium of Rs.340-63 was paid to cover the risk when used for private purpose also. The policy further indicates ENDT No.MV/IMT.36=Agricultural and forestry vehicles-Extended cover. The offending vehicle ie., tractor for which Ex.B-1-insurance policy was issued by the third respondent, admittedly covers the risk of damage to property, bodily injury/death when used either for agricultural purpose or used for a private purpose. The policy being a comprehensive B policy and the insurer is liable to indemnify the insured when the vehicle is used by the insured for social, domestic or pleasure purpose. Even accepting the version of the respondent/insurance company to be true, the policy being a B-comprehensive policy covers the risk of persons travelling in the vehicle. R.W.1 who was examined on behalf of the insurance company could not substantiate the only plea of the learned counsel for the insurance company by showing that there was violation of the policy conditions by the second respondent in OP and that the policy does not cover the risk of death of the deceased who was travelling as an unauthorized passenger.

13. The Insurance Regulatory and Development Authority of India had specified that the occupants of private cars are to be treated as third parties by the insurers who are liable in such cases as per the provisions of the Motor Vehicles Act, 1988. It is brought to the notice that authority had in fact directed withdrawal of all appeals filed on the ground of such occupants of private cars being not third parties immediately, if the policy concerned is a standard motor package policy.

14. Applying the same analogy to the vehicle in question, as premium was paid for the use of said vehicle for private purposes and in view of the terms of the policy as extracted above, I feel that the insurance company is liable to compensate the owner. As noted above, the insurance policy is a B-comprehensive policy which undoubtedly covers the risk of third party like deceased and the liability to compensate cannot be considered opposed to the contents of the insurance policy."

11. In view of the aforementioned judgment, certainly, the claim in the instant appeal has to be allowed as the petitioners in the present O.P.No.888 of 2002 against which the instant appeal is preferred, cannot be discriminated and, therefore, appeal is allowed fastening liability on the 3rd respondent-Oriental Insurance Company Limited also maintaining the order passed by the Tribunal in all other respects.

12. In the result, the appeal is allowed. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

Date: 03.03.2015

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