

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.1616 OF 2010

JUDGMENT:

The 2nd respondent is insurer among 2 respondents including owner of the tractor and trailer bearing Nos.AP 20 J 7235 and AP 20 T 2389, in the claim petition filed by the injured in O.P. No.1029 of 2006 for the claim of Rs.4 lakhs under Section 166 of M.V Act and the Tribunal allowed the claim for Rs. 4,00,000/- fixing joint liability with interest at 7.5% per annum. Aggrieved by the same, the Insurance Company preferred the appeal against the claimant as 1st respondent and owner of the vehicle as 2nd respondent, the owner of the vehicle remained *ex parte* even before the Tribunal and also served in the appeal failed to attend.

2) Heard learned counsel for appellant/ insurer as well as the 1st respondent claimant respectively and perused the award of the Tribunal and also the grounds of the appeal from the material on record including the policy in question.

3) The policy issued is an Act policy. The Act policy under Section 147 of M.V Act covered the risks of driver of the vehicle and it is a passenger vehicle to the ticket collector and if it is a goods vehicle owner or representative of the goods and nothing beyond. The claim of the injured claimant before the Tribunal including from the evidence on record and finding of the Tribunal is that the tractor and trailer is claimed as being used for agricultural purposes and the injured is claimed as traveling on the trailer as one of the coolies and while going he fell down. So it is not a case of owner or representative of the goods in tractor and trailer much less while conducting agricultural purposes, thereby the Act policy does not cover the risk. Undisputedly, from the perusal of policy, there is no additional premium to cover any coolies under the Workmen compensation liability under the owner of the vehicle within the meaning of workmen. The liability is very clear on this aspect as held by this Court in MACMA No.2699 of 2012 dated 13.12.2014 also referring to the expressions of the Apex Court in ***National Insurance Company Limited vs Prem Bai*** and the subsequent expression in ***Sanjeev Kumar Samrat vs National Insurance Company Limited & others***, it categorically observed that policy must be comprehensive to cover the risk but not the Act Policy. There shall be no additional liability against the insurer to indemnify the owner on Act policy by

reiterating the expression in **Natioanl Insurance Company Limited vs Baljit Kaur** etc. Thus, there is no risk coverage by policy even as coolie as per the claim in traveling on the trailer that too not for loading and unloading of goods even much less while traveling with goods. However, the fact remains from the findings of the Tribunal vis-à-vis the evidence on record particularly FIR and charge sheet not in dispute including from the insurer by cross examination of PWs.1 to 3 including with reference to Exs.A1 and A2 and the evidence of RW.1 employee of the insurer with regard to the factum that, it is due to rash and negligent driving of the tractor propelled to the trailer, the vehicle turned turtle and the injured fell down in between the tractor and trailer and was ran over. The law is fairly settled in this regard referring to several High Court expressions more particularly by this Court in **United India Insurance Company Limited vs Kurva Yejjur Mallamma & others** that is also reiterated and upheld in subsequent expressions by this Court by various benches that if he was traveling as unauthorized passenger and fall down from the vehicle, he is a third party after fall and once he is a third party, even act policy covers the risk. However, the fact remains but for traveling in the vehicle as unauthorized passenger otherwise he could not met with accident and sustain the injuries and thus there is also negligence on his part by contribution.

4) Having regard to the above, it is just to apportion, the negligence of the injured to 40% and remaining 60% as third party to be made liable by owner and insurer of the vehicle. The Injuries sustained by the claimant are not due to falling down from the vehicle but as the vehicle run over after fall and there was amputation above right knee and below thigh. As per W.C Act, Schedule-1, Item No.19 amputation below middle thigh and above knee shown 60% permanent disability if it is taken from the date of accident dated 07.12.2005, the injured claimant working as a coolie and earning Rs.100/- per day vide page No.13 of the judgment of the lower Court line No.6. However, the income of the injured was taken at Rs.18,000/- per annum. In fact, even as per **Latha Wadhwa vs State of Bihar** in the absence of proof of earnings, the minimum to be taken at Rs.3,000/- if that is taken as claimed no way excessive, 60% therein comes to Rs.1800/- per month and the age of the injured is 23 years and multiplier applicable is '18' and not 17 as adopted by the Tribunal, it comes to Rs.3,88,800/- and in addition to that the Tribunal awarded Rs.30,000/- towards medical expenses and Rs.30,000/- towards transport charges, attendant charges and extra nourishment and Rs.1,00,000/- towards loss of marriage prospects, the total of which comes to Rs.4,84,000/-, rounded off to Rs.5,00,000/- .

60% of liability of the insurer therein comes to Rs.3,00,000/-.

5) Accordingly, the appeal is partly allowed while holding that from the Act policy for the injured traveling in the tractor risk not covered but later from his fall and subsequently the vehicle ran over from that as a third party he sustained injuries from the involvement of the vehicle in rash and negligent driving of the driver-cum-owner of the vehicle, 60% of liability of the insurer to indemnify the owner, for remaining 40% liability for the negligence of the injured. The compensation awarded by the Tribunal of Rs.4,00,000/- requires to be reduced to Rs.3,00,000/- with interest at 7.5% per annum from the date of petition till the date of realization. No order as to costs.

6) Consequently, miscellaneous petitions if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:12-11-2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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