HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.515 of 2006

JUDGMENT:

The National Insurance Company Limited-2nd respondent in M.V.O.P.No.566 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Khammam (for short, 'the Tribunal') preferred the instant appeal challenging the order dated 16.11.2005, whereby and whereunder the Tribunal granted a sum of Rs.4,15,000/- with interest at 7.5% per annum.

2. Respondent Nos.1 to 4 herein are petitioner Nos.1 to 4 respectively in the O.P. before the Tribunal, while respondent No.5 and appellant herein, who are owner and insurer of mini lorry (Swaraz Mazda) bearing registration No.AP 04U 3014, are respondent Nos.1 and 2 respectively.

3. Respondent Nos.1 to 4, who are claimants, are wife and children of Shyamarao Venkata Subbaiah, who died in a road accident.

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

5. The facts in brief, are that one Kasivarapu Chinna Venkata Subbaiah does business in pigs and he engaged coolies, among whom, the said Shyamarao Venkata Subbaiah, was one of the coolies, for the purpose of loading pigs at various places in Mydukur and to unload them at Bangalore. On 27.06.2004, the pigs were loaded in Mydukur and in surrounding places into Swaraz Mazda bearing registration No.AP 04U 3014, belonging to the 1st respondent and

while proceeding to Bangalore, when the vehicle reached Guvvalacheruvu, they had meals there and again started and when reached Vaddipalli, the driver of the vehicle drove it in a rash and negligent manner at high speed, dashed against a wall of a culvert, which was under repair, due to which, the mini lorry reversed towards West of the road, as a result, Venkata Subbaiah and some others fell down along with pigs and his instantaneous death had taken place. The petitioners, being the wife and children of Venkata Subbaiah (who is hereinafter referred to as 'deceased'), claimed that the deceased was earning Rs.150/- per day for loading and unloading pigs and also collecting pigs around the villages, and, thus, earning Rs.4,000/- per month, he was 37 years old on the date of accident, and they lost their dependency, and, therefore, they sought compensation of Rs.5,00,000/- from respondent Nos.1 and 2 by laying a claim under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

6. Before the Tribunal, the 1st respondent-owner of the accident vehicle remained *ex parte* and the 2nd respondent-Insurance Company opposed the claim and also obtained orders under Section 170 of the Act by filing I.A.No.1052 of 2004 to take out defences at an appropriate time. One of the specific pleas raised by the 2nd respondent is to the effect that the risk of the deceased was not covered as he was only a coolie engaged by the owner of the goods, and not working on the lorry as a coolie, and no premium was paid, and, therefore, sought to dismiss the claim. This has been the stand taken by the 2nd respondent in the additional written statement.

7. Basing on the said pleadings, the Tribunal framed the following three issues about the responsibility for the accident, thus:

> "1) Whether the deceased Shyamarao Venkatasubbaiah died in a motor vehicle accident on 27-6-2004 due to rash and

negligent driving of driver of R.1's vehicle bearing No.AP–04–U-3014 Swaraz Mazda?

2) Whether the petitioners are entitled for compensation, if so to what amount and from whom?

3) To what relief?"

8. During enquiry before the Tribunal, on behalf of the petitioners, the 1st petitioner examined herself as P.W.1 besides examining two more witnesses as P.Ws.2 and 3 and marked Exs.A.1 to A.4; and on behalf of the contesting 2nd respondent-Insurance Company, its official, K.N.Chandra Mouli, was examined as R.W.1 and Exs.B.1 to B.3 were marked.

9. On appraisal of evidence, both, oral and documentary, let in by the parties, the Tribunal held on issue No.1 that due to rash and negligent driving of the mini lorry bearing registration No.AP-04-U-3014, the accident had occurred, and, accordingly, found issue No.1 in favour of the petitioners. On issue No.2, the Tribunal, while determining the compensation arriving at Rs.4,15,000/- under various heads as detailed in paragraph-24 of the order under challenge, dealt with as to whether the risk of the deceased was covered or not, and placing reliance on the decisional law relied on by the learned counsel on either side, adverted to in paragraph No.27, rejected the stand of the Insurance Company observing thus:

> "It is the claim of the 2nd respondent that no coolies shall travel in the given vehicle. It is not the claim of the 2nd respondent that there is violation of any permit condition in this case. In total an amount of Rs.12,411/- has been collected towards premium under Ex.B.1 policy. Considering all these circumstances, it cannot be said that there is no coverage of insurance for the owner and the loading and unloading coolies travelling in the accident goods lorry."

Concerning failure to possess effective driving licence on the date of accident, though, the 2nd respondent examined R.W.1, one of its employees from the local branch, and marked Ex.B.2 driving licence held by the driver of the accident vehicle, which had expired on 08.07.2000 and as on the date of accident, i.e., on 27.02.2002, he did not possess valid and effective driving licence, still, the Tribunal without adverting to the evidence of this witness, rejected the stand of the Insurance Company by observing elaborately in paragraph No.'28' thus:

> "As to the 2nd contention of the 2nd respondent is concerned, it cannot be accepted. It is a well established principle of law that the insurer cannot avoid his liability, on the ground that the vehicle was being driven by unlicensed driver. Further, in the present case, it is not the claim of the 2nd respondent that the driver of the given vehicle got no driving licence. But it is their claim that his driving licence got lapsed by the date of the accident, only."

fastened liability on the Insurance Company.

10. Aggrieved of the aforesaid order, the instant appeal is preferred by the Insurance Company contending in the grounds of appeal that the deceased was an unauthorized passenger and his risk was not covered by Ex.B.1 insurance policy and the Tribunal, somehow, did not consider the decision of the Hon'ble Apex Court in **National Insurance Co. Ltd. v. Bommiti Subbayamma and another**[1], and, on the other hand, followed the decision in **Oriental Insurance Co. Ltd. v. Kashim and another**[2]. It is also stated that the Tribunal ought to have given a finding that since driver of the insured vehicle was not possessing valid driving licence to drive the same at the time of accident, it amounts to violation of terms and conditions of the insurance policy on the part of the insured, and,

therefore, the direction that the insurer to recover the amount claimed from the insured after paying the same to the claimant does not arise.

11. Heard Sri P.Phalguna Rao, learned Standing Counsel for the appellant, and Sri D.Kodanda Rami Reddy, learned counsel for the respondent Nos.1 to 4. No representation on behalf of the 5th respondent.

12. Learned Standing Counsel for the appellant-Insurance Company contends that the risk of the coolies of the hirer is not covered by Ex.B.1 insurance policy and the liability towards employees carried in vehicle is limited to the employees of insured but not employees of hirer of goods vehicle and to fortify his submission, he relied on a decision of the Hon'ble Supreme Court in **Sanjeev Kumar Samrat v. National Insurance Co. Ltd. and others**[3], and, therefore, contends that the Tribunal is not right in fastening liability on the Insurance Company.

13. The learned counsel for the petitioners (respondent Nos.1 to 4 herein) contends that the risk of the coolies is covered by Ex.B.1 insurance policy, and in support of the said submission, he placed reliance on a decision of this Court in **United India Insurance Co. Ltd. v. Sharapuram Balavva and others**[4] and the decision of the High Court of Kerala in **National Insurance Co. Ltd. v. Printo P. Jose and others**[5] and sought to dismiss the appeal.

14. So far as the fact-situation is concerned, there is no dispute between the rival parties. The two points that arise for consideration are: (1) Whether the risk of the coolies of hirer is covered to indemnify the owner of the vehicle by the insurer? and (2) Whether the driver of the accident vehicle did possess valid and effective driving licence at

the time of the accident? and if not, the consequence thereof?

Point No.1:

15. Since the fact-situation occurring in the instant case is not in dispute and the deceased was no other than the coolie of the hirer, travelling in the accident vehicle, for loading pigs at Mydukur and surrounding villages and unloading them at Bangalore, along with other coolies engaged by the hirer of the lorry. Thus, admittedly the deceased was not a coolie employed by the owner of the lorry. In this context, a decision in **Sanjeev Kumar Samrat's** case (3 supra) relied on by the learned counsel for the Insurance Company resolves the controversy since it was held therein that the liability towards employees carried in vehicle was limited to the employees of insured, but not of the employees of hirer of the goods vehicle. The Hon'ble Apex Court, while interpreting the proviso (i)(c) of sub-section (1) of Section 147 and Section 167 of the Act and Section 3 of the Workmen's Compensation Act (8 of 1923), gone into the object and reasons of amendment made to Section 147 of the Act and held in paragraph No.'24', thus:

> "It is worthy to note that sub-clause (i)(c) refers to an employee who is being carried in the vehicle covered by the policy. Such vehicle being a goods carriage, an employee has to be covered by the statutory policy. On an apposite reading of Sections 147 and 167 the intendment of the Legislature, as it appears to us, is to cover the injury to any person including the owner of the goods or his authorized representative carried in a vehicle and an employee who is carried in the said vehicle. It is apt to state here that the proviso commences in a different way. A policy is not required to cover the liability of the employee except an employee covered under the 1923 Act and that too in respect of an employee carried in a vehicle. To put it differently, it does not cover all kinds of employees. Thus, on a contextual reading of the provision, schematic analysis of the Act and the 1923 Act, it is quite limpid that the statutory policy only covers the employees of the insured, either employed or engaged by

him in a goods carriage. It does not cover any other kind of employee and therefore, someone who travels not being an authorized agent in place of the owner of goods, and claims to be an employee of the owner of goods, cannot be covered by the statutory policy and to hold otherwise would tantamount to causing violence to the language employed in the Statute. Therefore, we conclude that the insurer would not be liable to indemnify the insured."

Thus, the Hon'ble Apex Court, while dealing with a similar situation, held that the liability of the employees of hirer of the goods vehicle is not covered.

16. Turning to the decision in **Sharapuram Balavva's** case (4 supra) relied on by the learned counsel for the petitioners (respondent Nos.1 to 4 herein), the fact-situation is not akin to the one occurring in the instant case. The facts therein would reflect that a transport bus was insured by its owner and hired the same to Andhra Pradesh State Road Transport Corporation. Thus, while dealing with the object of requirement of compulsory insurance, this Court held in paragraph Nos.13 and 14, thus:

"13. The Apex Court, apart from considering the exhaustive nature of the definition of the owner under the new Act, also took into consideration the requirement of compulsory insurance against the third party risk under Section 146 of the Act. The liability of the insurance company to pay compensation to the third parties under a comprehensive policy, and also the duty of the insurance company to satisfy the judgments and awards against the persons insured in respect of third party risks, as envisaged under sections 147 and 149 of the Motor Vehicles Act. The Apex Court also took the view that there is neither any statutory duty cast on the owner under the Act or under any Rules to seek permission from the insurance company nor is it under any of the conditions issued by the insurance company before giving the vehicle on hire to the Corporation.

14. In the instant case, the learned Tribunal mentioned in its

> judgment that in the cross-examination the Administrative Officer of the insurance company who was examined as RW.1 admitted that the policy of insurance is a comprehensive policy and the policy did not contain any clause that the bus could not be given on hire. Therefore, there is no statutory requirement which obligates the owner to inform in advance to the insurance company of his intention to give the bus on hire to A.P.S.R.T.C. and also the policy does not place any such restriction. Even if there is any such clause, it would be contrary to the statutory provisions of the Motor Vehicles Act since none of the provisions contain any embargo that the owner of the vehicle has to obtain consent from the insurance company before hiring the vehicle insured to A.P.S.R.T.C. According to the law laid down by the Supreme Court in *U.P.State Road Trans. Corpn. v. Kulsum* (2011 ACJ 2145 SC), when the vehicle insured with the insurance company was hired to A.P.S.R.T.C. under the provisions of the Act, it is deemed to have been hired along with the policy and it is not open for the insurance company to disown its liability."

The facts would reveal that it was a case where there was hire agreement with the Corporation by the insured owner and the entire risk was transferred and the transfer was based on the hire agreement between the parties. Thus, the situation is not akin to the one occurring in the instant case. Coming to the decision in **Printo P. Jose's** case (5 supra) relied on by the learned counsel for the petitioners (respondent Nos.1 to 4 herein), again the fact-situation is not alike as occurring in the instant case, for the reason that the injured therein was cleaner of a goods carriage and an employee of the insured being carried in that vehicle and his risk was covered by the policy therein. Therefore, the said decision is inapplicable to the fact-situation occurring in the instant case.

17. Therefore, the finding recorded by the Tribunal in paragraph No.27 of the order under challenge observing that since premium of Rs.12,411/- was collected under Ex.B.1 insurance policy, it cannot be

said that there was no coverage of insurance for the owner and loading and unloading coolies travelling in the accident vehicle, is incorrect, more particularly, when the contents of Ex.B.1 are perused, nowhere it is indicated that the premium was paid covering risk of the persons other than the persons mentioned in the second leaf of the policy. Therefore, there is substance in the submission of the learned counsel for the appellant-Insurance Company based on the decision of the Hon'ble Apex Court in **Sanjeev Kumar Samrat's** case (3 supra). Thus, this point is held in favour of the appellant-Insurance Company.

Point No.2:

18. Coming to the absence of valid and subsisting driving licence at the relevant time, the evidence of R.W.1, in his chief-examination, would make it clear that the driving licence of driver of the accident vehicle, by name Y.Yesaiah, had expired by 08.07.2000 and he did not renew his licence after 08.07.2000. The accident had taken place on 27.06.2004 and the extract issued by the Road Transport Authority was marked as Ex.B.2. Thus, at the time when Ex.B.2 was exhibited through R.W.1 by the 2nd respondent, no objection was taken as to its marking. However, concerning the contents therein, except eliciting from him that he does not know whether the driving licence was subsisting or not, nothing is forthcoming from the petitioners' side. Even the date of renewal was not suggested to this witness. No doubt, the insured has not secured the presence of officials of the R.T.A. to examine them in that regard but when positive evidence was let in by marking Ex.B.2, which was obtained from the R.T.A., a duty is cast on the opposite party to rebut the same, more particularly, when a suggestion was made that it has been renewed subsequently. In this regard, the Tribunal, observing that it was not the claim of the 2nd respondent-Insurance Company that the driver of accident vehicle possessed no driving licence and it is their claim that

his driving licence was lapsed by the date of the accident, however, the insurer cannot escape from its liability since it is a well established principle of law that the insurer cannot avoid its liability on the ground that the vehicle was being driven by an unlicenced driver, recorded a finding that the breach was not a fundamental breach, if it is not found to have contributed to the cause of the accident, by placing reliance on a decision of the Hon'ble Apex Court in **National Insurance Company Limited v. Swaran Singh and others**[6].

19. But, absence of valid and subsisting driving licence on the date of accident, certainly, is a ground to exonerate the insurance company from its liability. Thus, the finding recorded by the Tribunal fastening liability on the insurance company just by holding that the breach was not fundamental, cannot be sustained. Point No.2 is accordingly answered in favour of the appellant.

20. For the foregoing reasons, the instant appeal is allowed setting aside the order and decree, dated 16.11.2005, passed in M.V.O.P.No.566 of 2004 by the Tribunal insofar as the finding recorded by it fastening liability on the Insurance Company is concerned, but however, in all other respects, the order is maintained. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

16th February, 2015.

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[1] 2005 ACJ 721

[2] 1996 ACJ 928

[3] AIR 2013 SC 1125

[4] 2014 ACJ 1274

[5] 2014 ACJ 818

[6] 2004 ACJ 1