THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Miscellaneous Appeal No.514 of 2008

JUDGMENT:

This appeal under Section 30 of the Workmen's Compensation Act ('the Act', for brevity) is directed against the order dated 09.06.2008 in W.C.No.29 of 2007 passed by the Commissioner for Workmen's Compensation & the Assistant Commissioner of Labour-I, Guntur.

2. I have heard the submissions of the learned counsel for the appellant/2nd Opposite Party ('the 2nd opposite party', for brevity) and the learned counsel for the 1st respondent/applicant ('the applicant', for brevity). I have perused the material record. The 1st opposite party is stated to be not a necessary party.

3. The introductory facts, which are necessary for consideration, in brief, are as follows:

The applicant having filed an application before the learned Commissioner had claimed compensation pleading *inter alia* that he had sustained injuries out of and during the course of his employment as a cleaner on the lorry bearing registration no. AP 7 TT 9979 of the 1st opposite party insured with the 2nd opposite party. The 1st opposite party having filed a counter had admitted the employment of the applicant under him and the accident in which the applicant was said to have sustained injuries out of and during the course of his employment as cleaner but, had further contended that the 2nd opposite party is alone liable to pay compensation as his lorry was insured with it and as the said policy was valid and covered the risk of the applicant and the liability of the 2nd opposite party. The 2nd opposite party having filed a counter had resisted the claim of the applicant on various grounds. At trial, the applicant and his supporting witnesses were examined as AWs 1 to 3 and exhibits A1 to A8 and exhibit X1 were marked on his side. The officer of the 2nd opposite party was examined as RW1 and exhibit B1, the copy of the policy of insurance in respect of the said lorry was exhibited. On merits, the learned Commissioner had awarded a total compensation of Rs.1,04,633/- to the applicant recoverable jointly and severally from both the opposite parties and had directed the same to be deposited by way of a demand draft drawn in favour of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Guntur and had also held that on failure to so deposit, interest at the rate of 8% per annum simple is payable on the awarded amount from the date of the accident to the date of realization. Aggrieved of the said orders, the 2nd opposite party had preferred this appeal.

4. The learned counsel for the 2nd opposite party had contended as follows: 'The learned Commissioner was not correct in fastening the liability on the 2nd opposite party-insurer when no premium is paid covering the risk of the applicant, who was a cleaner on the lorry as per the pleaded case of the applicant. The learned Commissioner had erroneously appreciated the evidence. He was not correct in considering exhibits A1 to A8 and the evidence of AW2. The Commissioner had erred in saddling the 2nd opposite party with the liability when no premium to cover the risk of the applicant-cleaner was collected under exhibit B1-insurance policy and when the said policy did not cover the risk of the applicant and the liability of the 2nd opposite party. The learned Commissioner had grossly erred in holding that the applicant is an employee of the 1st opposite party though no acceptable evidence was brought on record.'

4.1 He had further contended that the insured and the applicant cannot claim that the cleaner/applicant comes under the description 'any person' or 'passenger'; the policy does not cover the risk of any workmen; the applicant, who is a cleaner and who had travelled in the lorry at the time of the accident is not a third party; and, therefore, the 2nd opposite party/insurer cannot be fastened with any liability as the 1st opposite party-insured had not paid any premium to cover the risk of a cleaner/the applicant. In support of the said contentions, he had placed reliance on the following decisions: (i) **Ramashray Singh v. New India Assurance Co. Ltd.**[1], (ii) **Dudekula Salabee v. R.Siva Sankar Reddy**[2], (iii) **New India Assurance Co. Ltd. V. Suraya Bee**[3], (iv) **K.Sarveswara Rao v. Kakaraparthi Anjali Devi**[4] and (v) **New India Assurance Company Limited v. Lodya Shankar and another**[5].

5. Per contra, the learned counsel for the applicant would contend as follows: 'The learned Commissioner had framed appropriate issues and had accurately considered the facts and properly appreciated the evidence and had answered all the issues correctly. The applicant is a cleaner of the lorry was sufficiently established. Therefore, he is an employee within the meaning of the provisions of the Act. The learned Commissioner had rightly held that the injured-applicant is an employee within the meaning of the provisions of the Act and had rightly determined the basic wage by taking into consideration the fact that at the time of accident, the injured was the cleaner of the subject Vehicle during the course and out of his employment under the 1st opposite party. Admittedly, there is a valid policy at the time of the accident in respect of the vehicle of which the 1st opposite party is the owner-cum-insured. The insurer has a liability not only under the policy but also under the statutory provisions. Hence, the reasoned order fastening the liability on the insurance company and directing it to pay the compensation is valid, both under facts and in law. He had placed reliance on the decision in **Oriental Insurance Company Ltd., Bangalore v. N.Ramanna and others**[6] in support of the contention that the insurance company cannot disown its liability though the word `cleaner' is not specifically mentioned in the policy and no premium is specifically paid to cover the risk of the cleaner as the policy, which is an 'Act policy' covers the risk of workmen.

6. In view of the contentions, the points that arise for determination in this appeal are:

i. **Whether the impugned order fastening the liability on the 2nd opposite party/insurer and directing it to pay the compensation to the applicant is unsustainable as no premium was admittedly paid to cover the risk of the applicant/cleaner?**

ii. **Whether the learned Commissioner did not properly appreciate the oral and documentary evidence? And if so, the order impugned is liable to be set aside?**

7. <u>POINTS</u>:

7.1 The contentions of both the parties are already stated supra, in detail. The applicant as AW1 deposed in line with his pleaded case. He had deposed about his travelling in the lorry in his capacity as a cleaner at the time of the accident, the manner of the accident, i.e., his fall from the lorry from the top of the lorry while checking the condition of ropes on the instructions of the driver, the injury sustained by him, namely, the fracture injury to his right knee besides other grievous injuries and his entitlement to receive compensation from both the opposite parties. In his evidence, he had exhibited exhibit A1, the certificate issued by the Station House Officer, Lalapet Law & Order Police Station, Guntur Town; exhibit A2, the copy of the trip sheet; exhibit A3, the copy of the way bill, exhibit A4, the copy of the commercial invoice of the concerned trading company; exhibit A5, his admission/discharge summary card issued by Government General Hospital, Guntur, exhibit A6, admission/discharge summary card issued by Government General Hospital, Guntur, exhibit A7, the copy of the insurance policy and exhibit A8, copy of the G.D entry besides exhibit X1, the case sheet maintained by the said hospital. He had maintained his stand in his cross-examination and had denied the suggestion that he is not the cleaner of the said lorry and that there is no employee-employer relationship between him and the 1st opposite party and that he is only a passenger at the time of the accident and that no premium is paid to cover the risk of a cleaner and that he had sustained simple injuries and no loss of earning capacity. AW2, a Head Constable in the above said police station at the relevant time had corroborated the version of AW1 in regard to his sustaining injuries while coming on the lorry of the 1st opposite party. He had deposed about the entry made on 24.11.2006 in the General Diary of the police station and the issuance of exhibit A1 by his police station. He had stated that the lorry number was not mentioned in the G.D entry, but, had affirmed that the intimation about the accident was received from the Government General Hospital, Guntur; and, had denied the suggestion that the G.D entry was made without doing any investigation. AW3 is the doctor, who had treated the AW1 in the Government Hospital for compound fracture of right femur just above the right knee joint which extended into right knee joint and the correction of the said fracture by fixing implants and the non-union of the fracture and the shortening of that limb by one inch, restriction of movements of right knee joint and the fact that AW1 needs support while walking. He had certified the percentage of disability at 35%. In his evidence, exhibit X1, case sheet was exhibited and the same discloses that AW1 had sustained injuries due to a fall from the lorry. He had admitted that the lorry number was not mentioned in exhibit X1 and had denied the suggestion that he had assessed the disability on the higher side. RW1 has no personal knowledge about the employment of the applicant and the accident etcetera is not in dispute. On an analytical consideration of the evidence, this Court finds that the evidence on record sufficiently established that the applicant was employed as a cleaner on the lorry of the 1st opposite party and that he had sustained injuries and consequential disability on account of the injuries, which he had sustained out of and during the course of his employment as cleaner on the lorry of the 1st opposite party and that therefore, there is no merit in the contentions of the insurance company that the applicant had failed to establish his case and that the order impugned is unsustainable in this regard.

7.2 Admittedly, exhibit B1 (=A7) insurance policy was issued in respect of the subject lorry and it was valid and was in force at the time of the accident. It is also admitted and it is also established by examining RW1 that no premium was collected under the said policy to cover the liability in case of personal injuries or the death of a cleaner. RW1 also testified that as per IMT 28, the company is liable to indemnify the insured's legal liability under the Workmen's Compensation Act, if only, an additional premium of Rs.25/- was paid by the insured and that in this case the 1st opposite party-cum-insured has not paid the said additional premium and as such, the company is not liable. Basing on the admitted facts and the evidence brought on record, the learned counsel for the 2nd opposite party would contend that the order impugned fastening liability on the 2nd opposite party is erroneous and is liable to be set aside. The other contentions of both the sides on this relevant aspect also are already stated supra.

7.3 Coming to the relevant legal aspect, in the decision in **Ramashray Singh** (1 supra), the facts and ratio are as follows:

> **Certain passengers were carried for hire in a trekker on which the deceased therein was employed as a khalasi. His legal heirs claimed compensation under the Act. Since it was found that the vehicle was comprehensively insured, the insurance company was made liable. That order of the Commissioner was challenged before the High Court. The High Court had held that in the absence of any special contract, the rights of the parties were governed by the statute and the statute did not require the insurer to cover the liability in respect of an accident to a khalasi. That order was impugned in the Civil Appeal before the Supreme Court and it was contended that the policy expressly covered the death or injury to the Khalasi by drawing attention to the particulars in regard to seating capacity of the vehicle under which sub-head the figure '13+1' was inserted. The Supreme Court considered the admitted fact that a cleaner would include a khalasi;**
> **However, the Supreme Court had held that the contention that the policy was comprehensive one and would therefore, cover all the risks is unacceptable and that even assuming that the kahalsi is a conductor, the insurance company cannot be made liable as no premium was collected to cover the risk of injury to a conductor and as the insurance policy covers only the person or classes of persons specified in the policy. Finally, the Supreme Court had held that since the concerned employee was not engaged as a driver in respect of whom premium was paid apart from passengers, his claim is unsustainable.**

In **Dudekula Salabee** (2 supra), it was noticed by this Court that there is no separate contractual obligation between the insured and the insurer covering the risk of the owner of a tractor and trailer; and, that therefore, it was held that the question of liability of insurer does not arise in view of the limitations under the provisions of the Motor Vehicles Act ('the M.V.Act', for short). In **Suraya Bee** (3 supra), this Court following the ratio in Ramashray Singh (1 supra) had held that unless and until extra premium is paid under the contract of insurance, the cleaner is not covered under the policy and that the insurer is not liable to pay the compensation as no such extra premium was paid as is evident from the facts in the cited case. In **K.Sarveswara Rao** (4 supra)**,** the facts would show that no separate premium was paid to cover the liability of the driver of the bus and however, a contention was raised by the leaned counsel for the owner of the bus that no separate premium is required to be paid to cover the driver of the bus and once an insurance policy on passenger transport vehicle is taken, the insurance coverage automatically extends to the driver. It was also urged that additional premium was paid to cover the risk of a cleaner of the vehicle. Nonetheless, the learned counsel for the insurance company placed reliance on Ramashray Singh's case (1 supra) and had contended that even in a case where a Khalasi was equated to a conductor, there is need to show that the owner paid additional premium to cover the risk of a conductor and that therefore, unless additional premium is paid to cover the risk of a driver, the insurance company cannot be fastened with any liability. This Court considered the facts and the ratios cited before it and had held as follows: 'In view of the principle of law enunciated in the above precedents, the provisions of Section 147 of the Motor Vehicle Act, 1988 and the terms of the insurance policy (Ex.A4/B1), I am of the opinion that the insurance company cannot be fastened with liability to pay compensation as the owner did not pay premium to cover the cleaner and the deceased was a cleaner. I therefore see no error in the decision arrived at by the Commissioner.' In **Lodya Shankar** (5 supra), the facts would indicate that the owner chose to insure the risk of his driver and cleaner only, by paying Rs.30/- as premium, but did not pay any premium to cover the risk of his coolies being carried on his lorry. Therefore, this Court held that it is well known that contract of insurance is but a contract of indemnity, and so the insurer is liable only to the extent of liability it undertook and that therefore, the appellant is not bound to indemnify the 2nd

respondent/insured for the risk that occurred to his workers or coolies that were being carried in the lorry and the appellant/insurer has to indemnify him for the risk of his driver and cleaner only and that unless there is a contract between the owner of the vehicle and the insurer, the insurer cannot be made liable for payment of compensation due from the owner of the motor vehicle to a third party. It was thus held in this cited case that unless the owner of the vehicle pays premium to cover the risk of coolies being transported in his lorry, the insurer cannot be made liable for payment of the compensation due to them from their owner.'

7.4 In the decision in **N.Ramanna** (6 supra), the facts would indicate that the insurance policy covered the driver, the conductor and two workmen, however, the cleaner had died in the pleaded accident and therefore, a question arose as to whether the appellant/insurance company was obliged to pay any compensation to the dependants of the cleaner. This Court had held that since the cleaner is supposed to work under the control of the owner of the vehicle and also under the supervision of the driver, while assisting him in the manner required, the cleaner would fall in the said set of facts and circumstances of the cited case, within the category of 'workmen' and that therefore, the appellant is obliged to pay the compensation as the policy covered two workmen.

7.5 In **National Insurance Co. Ltd. V. Prembai Patel**[7], which is a decision rendered on 18.04.2005 by a three-judge Bench of the Supreme Court, the facts and the ratio are as follows:

'In a motor vehicle accident one Sunder Singh, the driver of the truck, had died when an accident had occurred on account of breaking of the arm bolt of the truck; and, the High Court had held that the owner of the vehicle had not taken adequate care in maintaining the vehicle and in keeping it in a road worthy condition. The said finding has become final since not assailed before the Supreme Court and as nor was there any reason to take a contrary view. The High Court had held that the insurance company was liable to satisfy the whole award and a direction was given to it to pay the entire amount of compensation awarded to the claimants (respondents 3 to 6). The appellant/insurer challenged the judgment of the High Court in the Civil Appeal before the Supreme Court. The truck was comprehensively insured. The owner/2nd respondent, while getting his vehicle insured, had paid only that much amount of premium as was required to cover the liability under the Act and he had not paid any premium to cover the entire amount of liability *qua* an employee; and, therefore, it was contended that the liability of the insurer would be a restricted one and it need not satisfy the entire award made in favour of the claimants.

Therefore, the question before the Supreme Court was this: ‘Having regard to the policy taken by the owner of the vehicle and the provisions of Sections 147 and 149 of the M.V.Act, whether the insurer’s liability is restricted to that, which is provided under the Act and, if so, whether the insurer is not liable to satisfy the entire award made in favour of the claimants?’

In the afore-stated facts and circumstances of the case, the Supreme Court considered the interpretation of relevant provisions of Sections 147 and 149 of the M.V. Act and had held as follows:

> **12. The heading of Chapter XI of the Act is Insurance Of Motor Vehicles Against Third Party Risks and it contains Sections 145 to 164. Section 146(1) of the Act provides that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter XI. Clause (b) of sub-section (1) of Section 147 provides that a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of death of or bodily injury to any person or passenger or damage to any property of a third party caused by or arising out of the use of the vehicle in public place. Sub-clauses (i) and (ii) of clause (b) are comprehensive in the sense that they cover both 'any person' or 'passenger'. An employee of owner of the vehicle like a driver or a conductor may also come within the purview of the words 'any person' occurring in sub-clause (i). However, the proviso (i) to clause (b) of sub-Section (1) of Section 147 says that a policy shall not be required to cover liability in respect of death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Act if**

the employee is such as described in sub-clauses (a) or (b) or (c). The effect of this proviso is that if an insurance policy covers the liability under the Workmen's Act in respect of death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b), it will be a valid policy and would comply with the requirements of Chapter XI of the Act. Section 149 of the Act imposes a duty upon the insurer (insurance company) to satisfy judgments and awards against persons insured in respect of third party risks. The expression - "such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy)" - occurring in sub- section (1) of Section 149 is important. It clearly shows that any such liability, which is mandatorily required to be covered by a policy under clause (b) of Section 147(1), has to be satisfied by the insurance company. The effect of this provision is that an insurance policy, which covers only the liability arising under the Workmen's Act in respect of death of or bodily injury to any such employee as described in sub-clauses (a) or (b) or (c) to proviso (i) to Section 147(1)(b) of the Act is perfectly valid and permissible under the Act. Therefore, where any such policy has been taken by the owner of the vehicle, the liability of the insurance company will be confined to that arising under the Workmen's Act.

13. The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen's Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy.

14. The aforesaid interpretation of the relevant provisions applicable to the case in hand is in consonance with the view expressed by a Constitution Bench in New India Assurance Co. Ltd. v. C.M. Jaya and Ors. [2002]1SCR298, where, while interpreting the provisions of Section 95(2) of Motor Vehicles Act, 1939, the Court held as under in para 10 of the report: -

"............................The liability could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself. However, there is nothing in Section 95 of the Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risk. In such an event, the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in the policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to rewriting the statute or the contract of insurance which is not permissible."

The Bench also referred to earlier decisions rendered in New India Assurance Co. Ltd. v. Shanti Bai : [1995]1SCR871 and Amrit Lal

Sood v. Kaushalya Devi Thapar : [1998]2SCR284, and observed that in case of an insurance policy not taking any higher liability by accepting a higher premium, the liability of the insurance company is neither unlimited nor higher than the statutory liability fixed under Section 95(2) of the Motor Vehicles Act, 1939. It was further observed that it is open to the insured to make payment of additional higher premium and get higher risk covered in respect of third party also. But in the absence of any such clause in the insurance policy, the liability of the insurer cannot be unlimited in respect of third party and it is limited only to the statutory liability.

15. Though the aforesaid decision has been rendered on Section 95(2) of the Motor Vehicles Act, 1939 but the principle underlying therein will be fully applicable here also. It is thus clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) should not be restricted to that under the Workmen's Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act."

7.6 A plain reading of the above decision rendered by a Bench of three Hon'ble Judges of the Supreme Court lays bare that sub-clauses (i) and (ii) of clause (b) of Section 147 are comprehensive in the sense that they cover both 'any person' or 'passenger' and that an employee of owner of the vehicle like a driver or a conductor may also come within the purview of the words 'any person' occurring in sub-clause (i) and that however, the proviso (i) to clause (b) of sub-section (1) of Section 147 says that policy shall not be required to cover the liability in respect of death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such employee arising out of and in the course of his employment other than a liability arising under the Workmen's Act, if the employee is such as described in sub-clauses (a) or (b) or (c). The Supreme Court had also held in this decision that the effect of this proviso is that if an insurance policy covers the liability under the Workmen's Act in respect of death or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b), it will be a valid policy and would comply with the requirements of Chapter XI of the M.V.Act and that Section 149 of the M.V Act imposes a duty upon the insurer (insurance company) to satisfy judgments and awards against persons insured in respect of third party risks. The Supreme Court also held that the expression ‘such’ liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) occurring in sub-Section (1) of Section 149 is important and that it clearly shows that any such liability, which is mandatorily required to be covered by a policy under clause (b) of Section 147(1) of the M.V. Act has to be satisfied by the insurance company and that the effect of this provision is that an insurance policy, which covers only the liability arising under the workmen’s Act in respect of death of or bodily injury to any such employee as described in sub-clauses (a) or (b) or (c) to proviso (i) to Section 147 (1) (b) of the Act is perfectly valid and permissible under the said Act and that therefore, where, any such policy has been taken by the owner of the vehicle, the liability of the insurance company will be confined to that arising under the Workmen’s Act. From the ratio in the decision it is thus clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) should not be restricted to that under the Workmen's Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act.

7.7 Having regard to the fact that there is a policy under exhibit B1 in existence and in view of the precedential guidance in the decision of the Supreme Court in Prembai Patel’s case (7 supra) and in the light of the statutory provisions and as the applicant/cleaner is an employee of the 1st opposite party, it can safely be held that the learned Commissioner was justified in holding that the 2nd opposite party/appellant is liable to pay the compensation awarded to the applicant as per the provisions of the M.V. Act and the Workmen’s Compensation Act, presently known as Employees’ Compensation Act. This Court, on careful examination, finds that the compensation was correctly determined having regard to the facts and on proper appreciation of the evidence brought on record and that therefore, the order impugned calls for no interference. The points are accordingly answered against the appellant/2nd opposite party holding that the impugned order of the learned Commissioner is sustainable, both under facts and in law.

7.8 In the result, the appeal is dismissed. No costs.

Miscellaneous petitions, if any, pending in this appeal shall stand dismissed.

M. SEETHARAMA MURTI, J

24th June 2015
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THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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[1] LAWS (SC)-2003-7-105/JT-2003-6-97

[2] LAWS (APH)-2007-6-4/ALD-2008-1-161

[3] LAWS (APH)-2009-3-77/ALT-2009-4-760

[4] LAWS (APH)-2013-7-36/ALD-2013-5-351

[5] 2004(3) ALD 400

[6] 2005 (1) ALT 657

[7] LAWS (SC)-2005-4-59/JT-2005-4-399