HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 828 OF 2005

Judgment:

The 3rd respondent, United India Insurance Company Limited, Khammam Branch, in O.P.No. 444 of 1997 is the appellant herein. Aggrieved of the order, dated 17-04-2002, in the above O.P. passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - Additional District Judge, Khammam, whereby and whereunder, the total claim amount of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 was granted with interest at 9% per annum, the instant appeal has been preferred.

2. For the sake of convenience, the parties herein are hereinafter referred to as arrayed in the O.P. before the Tribunal.

3. The relevant facts are that one Konakanchi Samuel along with three other coolies was proceeding to the agricultural field of the 2nd respondent viz., M. Janaki Ramaiah in the tractor-trailer bearing registration No.AP-20-T-2735 and 2736 in order to dump the manure in his agricultural fields and after unloading the manure, when it was returning, near Kaluva Katta, since the 1st respondent, driver of the tractor-trailer, drove it at high speed in a rash and negligent manner, the link of the trailer was detached from the tractor and thereby Samuel fell down, received injuries and succumbed to the injuries while he was being shifted to Government Head Quarters Hospital, Khammam.

4. The petitioners being legal heirs of Samuel (hereinafter referred to as ‘deceased’) contended before the Tribunal that the deceased was earning Rs.1,200/- per month as a farm servant, and sought a total sum of Rs.1,50,000/- towards general and special damages.

5. Respondent Nos.1 and 2 remained *ex parte* before the Tribunal.

6. The 3rd respondent alone contested the claim by filing counter raising various pleas.

7. The Tribunal framed three (3) issues in the direction of fixing responsibility for the accident. During enquiry, the 1st claimant, wife of the deceased was examined as PW.1 besides examining an eyewitness to the accident as PW.2 and marked Exs.A-1 to A-5. On behalf of the respondent neither oral nor documentary evidence was adduced.

8. The Tribunal while affirming issue No.1 in favour of the claimants, on issue No.2, determined the compensation by taking the age of the deceased as 26 years and his monthly earnings at Rs.1,200/- and deducting 1/3rd therefrom towards his personal expenses, arrived at Rs.800/- per month (Rs.1,200/- x 1/3) as his monthly contribution to the family, by applying multiplier ‘17.66’ as per the decision of this Court in **Bhagwandas v. Md. Arif**[1], worked out the loss of dependency at Rs.1,69,536/- (Rs.800/- x 12 x 17.66) and Rs.20,000/- towards loss of consortium, thus, arrived at a total compensation of Rs.1,89,536/-, but, however, restricted it to Rs.1,50,000/- as

the claim was only to that extent and accordingly granted the same with interest at 9% per annum.

9. It is the aforementioned order which is under challenge in the instant appeal by the insurer of the tractor-trailer contending in the grounds of appeal that the deceased was travelling in the vehicle as an unauthorised passenger and, therefore, no liability can be fastened on it as it was not obligated with the duty to indemnify the 1st respondent for violation of the conditions of the policy.

10. Heard Sri C. Prakash Reddy, learned counsel for the 3rd respondent (appellant - insurer).

11. The appeal against respondent Nos.3 and 6 was dismissed for default on 03-01-2012. The other respondents though served with notices, none appears on their behalf.

12. During course of arguments, it is brought to the notice of this Court that M.A.C.M.A.M.P. No.1410 of 2005 has been pending, which is filed under Order - XLI Rule 27 and Section 151 of the Code of Civil Procedure, 1908, requesting to receive copy of the insurance policy as additional evidence to enable the Court to effectually adjudicate upon the matter in controversy between the parties in the interest of justice.

13. The learned counsel placed reliance on the observations of the Hon'ble Apex Court contained in paragraph 9 of the judgment in **Ramashray Singh v. New India Assurance Company Limited**[2]**,** thus.

"A copy of the original policy was produced

> by respondents in the course of arguments. The appellant has objected to the production of the policy at this stage. We would have understood and upheld the submission had the appellant not based his claim on the policy. Indeed, in the absence of the policy, we could not have entertained the appellant's claim at all. (See: Dr.T.V. Jose v. Chacko P.M. alias Thankachan 2001 (B) SCC 748)."

14. As seen from the appendix of evidence, the copy of insurance policy was not exhibited as a document either from the side of the petitioners in the OP or from the side of the third respondent – Insurance Company. The Tribunal has also, somehow, appears to have side lined that aspect, but, still, fastened liability on respondents 1 to 3, without examining whether the accident vehicle was covered with valid insurance policy on the date of accident, more particularly, to cover the risk of the deceased.

15. MACMAMP No.1410 of 2005, filed requesting to receive the copy of insurance policy, has been allowed by making an observation that the Tribunal has disposed of the claim petition without probing into whether there has been valid coverage of insurance policy concerning the tractor and trailor involved in the accident herein in order to examine whether the risk of the deceased was covered by it.

16. Since the policy is now received into Court and since some of the respondents, despite service of notices, have not entered their appearance, it is desirable to remit the matter to the Tribunal for disposal by giving a direction to give chance

to both sides to lead evidence for marking the copy of insurance policy now received and to dispose of the case in accordance with law, preferably within a period of six (6) months from the date of receipt of a copy of this order.

17. With the above direction, the MACMA is allowed and the order and decree challenged in the instant appeal are hereby set aside. However, in the circumstances, no order as to costs.

18. At this stage, it is submitted by the learned counsel for the appellant that 50% compensation awarded by the Tribunal was deposited. In case the said amount is still lying in the Court, the same be adjusted in case the claim for the petitioners/respondents is allowed or necessary directions be given depending on the result in the original petition.

19. As a sequel thereto, the Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 27.02.2015
Pv/Nsr

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[1] **1987 ACJ 1052**

[2] 2003(1) Decisions Today (SC) 632