HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1109 OF 2005

JUDGMENT:

The 2nd respondent - M/s United India Insurance Company Limited is the present appellant. Aggrieved by the order and decree, dated 13-09-2004, in O.P. No.46 of 2002, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Nellore (for short 'the Tribunal'), fastening liability on it, despite the fact that the deceased was travelling as unauthorized passenger and the trailer was not insured with it, the Tribunal fastened liability to pay compensation, preferred the present appeal under Section 173 of Motor Vehicles Act, 1988 (for short 'the Act').

2 . The appellant herein is 2nd respondent – Insurer in the O.P. before the Tribunal, while respondent No.1 to 5 are petitioners and respondent No.6, who is owner of tractor and trailer bearing registration No.AP 26/C 6415 and 6416, is respondent No.1 and respondent No.7, who was subsequently added since he was the owner of the vehicle as on the date of accident, is respondent No.3.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 27-06-2001, at about
1.00 P.M., deceased – Vadlapalli Thirupalu along with others was travelling from Vinjamur to Nallagondla as coolies in the tractor and trailer bearing registration Nos.AP 26C 6415 and 6416 owned by the 1st respondent and insured with the 2nd respondent and, when it reached near Old Cinema Hall in Vinjamur village, since the driver of tractor drove it in a rash and negligent manner at high speed, the trailer detached from the tractor and turned up side

down, resulting injuries to them and the deceased succumbed to injuries while undergoing treatment. The petitioners claimed that the deceased was working as mason maistry, earning Rs.100/- per day, contributing the entire amount for the family and, therefore, sought to grant Rs.2,00,000/-(Rupees two lakhs) as compensation by laying the claim under Section 166 of the Act.

5. Respondent No.3 was added as per the orders, dated
31-01-2003, in I.A. No.1371 of 2002, in view of the fact, that he was the owner of the vehicle as on the date of accident. However, respondent Nos.1 and 2 remained *ex parte* before the Tribunal.

6. The 2nd respondent – Insurance Company alone filed counter opposing the claim taking a specific plea that the deceased was travelling in the trailer as unauthorized passenger at the relevant time and the trailer was not insured with it and, therefore, sought to exonerate its liability.

7. Based on the pleadings, the Tribunal framed the following three issues about the responsibility for the accident.

> "1. Whether the accident occurred out of the use of the motor vehicle of respondent No.3?
>
> 2. Whether the petitioners are entitled to compensation? If so, to what amount and from which of the respondents?
>
> 3. To what relief ? "

8 . During inquiry before the Tribunal, the 1st petitioner besides examining herself as PW.1, has examined an eye-witness, Sri Thalluru Thirupalu, as PW.2 and marked Exs.A-1 to
A-3. On behalf of the 2nd respondent, one Sri G. Subrahmanya Sarma, an official from the local branch, was examined as RW.1 and Ex.B-1, copy of insurance policy, was marked.

9. On issue No.1, the Tribunal held that the accident has occurred due to rash and negligent driving of the driver of tractor. The Tribunal has also referred to the decisions relied on by the learned counsel for the 2nd respondent – Insurance Company in **New India Assurance Co., Ltd., v. Kamla and others; United India Insurance Co.,Ltd., v. Tam Tam Venkata reddy and another; United India Insurance Co.Ltd., v. Lingampalli Mondi and others;** and **National Insurance Co.Ltd., v. Baljit Kaur and others** and, finally held that in view of the said decisions, the Insurance Company has to pay compensation to the petitioners and later the same can be recovered by it from the 3rd respondent in execution proceedings.

10. Concerning determination of compensation, the Tribunal taking the contribution to the family at Rs.12,000/- and age of the deceased between the age group of 40 and 45 years, applied relevant multiplier and arrived the loss of dependency at Rs.1,68,000/-, besides granting Rs.2,000/- towards funeral expenses; Rs.2,500/- towards loss of estate and Rs.5,000/- towards loss of consortium to the 1st petitioner and thus, a total of Rs.1,77,500/- was granted as compensation with interest at 9% per annum, fastening joint and several liability on respondent Nos.2 and 3 only, while dismissing the claim petition against the
1st respondent.

11. It is the aforesaid order which is under challenge in the instant appeal preferred by the 2nd respondent contending in the grounds of appeal that the Tribunal, somehow, overlooked the fact that the trailer was not insured with the appellant and as per the provisions of Section 2 (46) of the Act, it is mandatory that trailers are also to be insured separately, but the facts as revealed from Ex.A-1, first information report, it shows that 40 persons were being carried in the trailer contrary to the policy conditions, and that the Tribunal, somehow, overlooked the fact that the deceased can only be construed as an unauthorized passenger in the tractor trailer as the tractor was exclusively

meant for agricultural purpose and, therefore, sought to set aside the order and decree so far as the appellant is concerned.

12. Heard Smt. S.A.V. Ratnam, learned counsel for the appellant. No representation for respondent Nos.1 to 4 and so also respondent No.5. The appeal against respondent No.6 was dismissed for default, by orders, dated 04-01-2012, but the same would not have any consequence in view, of the fact that the claim petition was also dismissed against him who was arrayed as respondent No.1 in the main O.P.

13. The Tribunal despite observing in the concluding sub-paragraph of paragraph No.9 thus:

> " In view of the above decisions, in the first instance the insurance company has to pay compensation to the petitioners and later, the same can be recovered by the insurance company from the 3rd respondent in execution proceedings."

still, fastened joint and several liability on Insurance Company – appellant herein, as seen from the concluding paragraph No.12 of the order under issue No.3. A perusal of contents of Ex.A-1, attested copy of first information report, would show that 40 persons were travelling in the said tractor and trailer at the relevant time. Since Ex.A-1 was exhibited on behalf of the petitioners and even admitted in the evidence through PW.1, PW.1 can not depose contra to what was recorded in Ex.A-1, though, she was not the author of Ex.A-1. The evidence of PW.2 is to the effect that only coolies were travelling along with him and the deceased, but he maintains silence as to how many persons really were travelling in the trailer. Even, Ex.A-2, attested copy of inquest report, would also reflect the same situation. The evidence of RW.1, one of the officials from the local branch office of the 2nd respondent, and the contents of Ex.B-1, copy of insurance policy, would reflect that the tractor alone was insured but not the trailer. So far as use of the tractor is concerned, it is mentioned as 'agriculture' under the column in Ex.B-1.

14. This apart, the petitioners while referring to the occupation of deceased, mentioned his avocation as ‘mason maistry’. That itself would completely condemns their case that the deceased was travelling as an agricultural coolie employed on the tractor by its owner. In such an event, certainly, it has to be held that the Tribunal went wrong in fastening liability on the

2nd respondent – Insurance Company, despite recording

a finding as in the above that there was violation of conditions of the policy. Nothing-else is required to probe further on the aspect of violation of terms and conditions of the policy and, therefore, the appeal is to be allowed.

15. It is submitted by the learned counsel for the appellant – Insurance Company that this Court has already directed to deposit half of the decretal amount and permitted the petitioners to withdraw the same. In case, the amount was already withdrawn by the petitioners, it is open to the appellant – Insurance Company to recover the same from the 3rd respondent, and in case the amount is not withdrawn, the appellant - 2nd respondent can seek refund of the amount.

16. Accordingly, the appeal is allowed, setting aside that part of the order and decree which fastens liability on the

2nd respondent – Insurance Company, maintaining in all other respects in regard to fastening liability on the 3rd respondent to pay compensation to the petitioners. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

March 26, 2015.

Mgr