

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

MACMA Nos.930, 938, 939 and 942 of 2009

COMMON JUDGMENT:

1 Aggrieved by the common judgment and award dated 06.10.2008 passed in MVOP Nos.241 of 2003, 114, 116 and 117 of 2004 on the file of Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Nellore the insurance company preferred all these appeals.

2 Since all these appeals arise out of the very same judgment and award passed in the above said O.Ps, they are being disposed of by this common judgment.

3 For the sake of convenience, the parties to this appeal are hereinafter referred to as they were arrayed in the O.P.

4 The facts leading to the filing of the present appeal are briefly as follows:

5 On 22.01.2003 the deceased in O.P.No.241 of 2003 and the claimants in O.P.Nos.114, 116 and 117 of 2004 were proceeding in a tractor and trailer bearing No.AP 26-H-5928 and A.P.26-H 1021 (hereinafter referred to as 'the crime vehicle') from Cherlopalem to Kasumuru Darga to attend cooli work. At about 10.45 a.m, when the crime vehicle reached Kanupuru village, the driver of the crime vehicle drove the same in a rash and negligent manner due to which the trailer was detached from the tractor and there was a jerk. Due to the sudden jerk, all the persons travelling in the trailer fell on the road and sustained injuries. All the injured were admitted in Government hospital, Nellore and while undergoing treatment, the deceased in O.P.No.241 of 2003 died. In connection with the said accident, the Station House Officer, V.Satram Police Station registered a case in Cr.No.15 of 2003 against the driver of the crime vehicle under

Sections 304-A and 337 IPC. The legal representatives of the deceased as well as the claimants filed the above said O.Ps seeking compensation from the second respondent with which the crime vehicle which belongs to the first respondent was insured as on the date of accident. Therefore, both the respondents are jointly and severally liable to pay compensation to the petitioners.

6 Though the first respondent filed counter, denying the various averments made in the petition, he did not participate in the trial. The contention of the first respondent is that as on the date of accident, the crime vehicle was insured with the second respondent and hence the second respondent alone is responsible to pay compensation, if any, to the petitioners.

7 Second respondent-insurer of the crime vehicle filed counter denying the averments made in the petition, inter *alia* contending that the first respondent allowed the deceased and the petitioners to travel in the crime vehicle as unauthorized passengers and thereby violated the terms and conditions of the policy. Hence there is no contractual or statutory obligation on the part of the second respondent to indemnify the liability of the first respondent. Therefore, the petition may be dismissed.

8 Basing on the above pleadings, the Tribunal framed the following issues in O.P.No.241 of 2003:

- i. Whether the accident occurred out of the use of the Motor vehicle of respondent No.1?
- ii. Whether the petitioners are entitled to compensation? If so, to what amount and from which of the respondents?
- iii. To what relief?

9 The Tribunal framed the following issues in O.P.Nos.114, 116 and 117 of 2014:

- i. Whether the accident in question is occurred, if so, was it due to the fault of the driver of Tractor and Trailer bearing Registration No.A.P.26/H.5928 and A.P.26/H.1021?
- ii. Whether the driver of aforementioned Tractor and Trailer was having valid and effective driving licence as on the date of accident?
- iii. Whether the claimant is entitled to compensation? If so, to what amount and from which of the respondents?
- iv. To what relief?

10 The Tribunal clubbed all the petitions and recorded common evidence. During the course of trial, on behalf of the petitioners P.Ws.1 to 6 were examined and Exs.A.1 to A.6 and Exs.X.1 and X.2 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Ex.B.1 was marked.

11 The Tribunal, after appreciating the oral, documentary evidence and other material available on record, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the tractor and trailer bearing No.AP.26-H-5928 and A.P.26-H 1021 and allowed the petitions in part by awarding an amount of Rs.90,000/- in O.P.No.241 of 2003 and Rs.30,000/- each in O.P.Nos.114, 116 and 117 of 2004 as compensation with interest at 7.5% p.a. from the date of filing of the petition till the date of realization and directed the respondent Nos.1 and 2 to deposit the same jointly and severally. As stated supra, feeling aggrieved by the said finding of the Tribunal, the second respondent – insurer of the crime vehicle filed these appeals.

12 The contention of Sri Naresh Byrapaneni, the learned counsel for the second respondent is two fold:

- i. At the time of accident the petitioners were not travelling in the crime vehicle as agricultural coolies; and

ii. Ex.B.1 - Insurance Policy does not cover the risk of agricultural coolies.

13 *Per contra*, the learned counsel for the petitioners / claimants Sri P.Ganga Ramireddy submitted that by the date of accident, the petitioners were travelling in the crime vehicle as agricultural coolies and Ex.B.1 policy covers the risk of agricultural coolies.

14 Now the only point that emerges for consideration in all these appeals is:

Whether the First respondent had
violated the terms and conditions of the policy
or not?

Point:

15 I have carefully gone through the judgment and award passed by the Tribunal. Nowhere it was mentioned whether the petitioners and the deceased were travelling in the crime vehicle as agricultural coolies or as unauthorized passengers. Ex.B.1 policy is a farmers package policy. Ex.B.1 policy covers IMT No.19, 24, 55 and 70. It is the duty of the Tribunal to record a specific finding whether the petitioners and the deceased were travelling in the crime vehicle, as on the date of accident, as agricultural coolies or as unauthorized passengers. Without giving a specific finding, it is not possible for any body to arrive at a conclusion whether the first respondent had violated the terms and conditions of Ex.B.1 policy or not. Even assuming but not conceding that if the petitioners were travelling in the crime vehicle at the time of accident as agricultural coolies, the next question that arises for consideration is whether Ex.B.1 policy covers the risk of such coolies or not. These are the vital aspects to be considered by the Tribunal. Unfortunately the Tribunal has not given any specific finding on this aspect. The learned counsel for the petitioners Sri Ganga Ramireddy submitted

that without a specific finding on this aspect, it is not possible to come to a conclusion by this Court whether the first respondent had violated the terms and conditions of the policy. If this Court expresses any opinion, the same may cause prejudice to either of the parties to the proceedings. Having regard to the facts and circumstances of the case, I am of the considered view that this is a fit case to remand the matter to the Tribunal to frame the following issues and answer the same.

- a. Whether the petitioners and the deceased were travelling in the tractor and trailer bearing No.AP 26-H-5928 and A.P.26-H 1021 as agricultural coolies or as unauthorized passengers at the time of accident.
- b. Whether Ex.B.1 policy covers the risk of agricultural coolies or not?

16 The Tribunal is hereby directed to afford reasonable opportunity to both parties to adduce evidence if they so desire. Since the O.Ps are of the years 2003 and 2004, the Tribunal is further directed to dispose of the matters as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this order.

17 With the above directions, all the appeals are allowed setting aside the judgment and award dated 06.10.2008 passed by the Tribunal. No order as to costs. As a sequel, miscellaneous petitions if any pending in all these appeals shall stand closed.

T. SUNIL CHOWDARY, J

Date: 23.03.2015

Kvsn