THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.1280 of 2008

JUDGMENT:-

This Civil Miscellaneous Appeal under Section 30 of the Workmen's Compensation Act, 1923 presently known as Employees' Compensation Act, 1923 ('the Act', for brevity) by the unsuccessful second opposite party/insurance company is directed against the order dated 29.09.2007 of the learned Commissioner for Workmen's Compensation–cum-the Assistant Commissioner of Labour, Eluru passed in W.C.No.21 of 2006.

2. I have heard the submissions of the learned counsel for the appellant/second opposite party ('the second opposite party', for brevity) and the learned counsel for the respondents 1 and 2/applicants ('the applicants', for brevity). None appeared for the third respondent/first opposite party. I have perused the material record.

3. The facts that lead to the filing of the present appeal by the second opposite party may be stated, in brief, as under:-

The applicants 1 and 2, who are the parents of the deceased, Bale Nageswararao, had filed the WC case claiming Rs.3,00,000/- as compensation for the loss sustained by them on account of the untimely death of the said deceased due to his involvement in a motor vehicle accident that had occurred on 08.12.2004, out of and during the course of his employment as a labourer on the tractor-trailer bearing registration nos.AP 37 V 1784 and AP 37 V 1785 belonging to the first opposite party and insured with the second opposite party. The first opposite party had remained *ex parte*. The second opposite party having filed a counter resisted the application of the applicants on various grounds.

3.1 On the basis of the pleadings, the learned Commissioner settled the following issues for trial:-

1. **Whether the accident occurred during the course of employment or not?**

2. **Whether all the opposite parties are liable to pay compensation and the quantum of compensation?**

3.2 At trial, the first applicant was examined as A.W.1 and exhibits A1 to A3 were marked on the side of the applicants. On the side of the 2nd opposite party, it's Senior Assistant was examined as R.W.1 and exhibits B.1 and B.2 were marked.

3.3 On merits, the learned Commissioner had allowed the claim petition of the applicants. The operative portion of the said order reads as follows:-

> **In view of the above facts the quantum of compensation payable to the applicant is = Age factor x 50% of wages = 225.22 x 2320.50 x 50/100 = Rs.2,61,312/- (Rupees two lakhs sixty one thousand three hundred and twelve only).**
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> **O.P. 1 being the employer and owner of the vehicle and the O.P.2 being the insurer of the vehicle are hereby directed to deposit jointly and severally Rs.2,61,312/- (Rupees two lakhs sixty one thousand three hundred and twelve only) towards compensation payable to the applicants by way of demand draft drawn in favour of the Commissioner for Workmens' Compensation and Deputy Commissioner of Labour, Eluru, within 30 days from the date of receipt of this order."**

3.4 Feeling aggrieved of the said orders, the 2nd opposite party/ Insurance Company had preferred this appeal.

4. The learned counsel for the appellant/second opposite party would contend as follows:

There is no statutory and contractual obligation on the part of the second opposite party to pay any compensation. The deceased was working under a fish tank owner and not under the first opposite party. There is no employer – employee relationship between the first opposite party and the deceased. The vehicle belonged to the first opposite party. The learned Commissioner failed to properly address the issue in regard to the employment injury and the death of the deceased out of and during the course of his employment under the first opposite party. There is no valid insurance policy covering the risk of the deceased. Therefore, the learned Commissioner has no jurisdiction to entertain the claim application and pass an award. The learned Commissioner had failed to see that the applicants had failed to establish the employer – employee relationship between the first opposite party and the deceased and the cause of death and the death of the deceased out of and during the course of his employment on the vehicle of the first opposite party. The risk of the deceased is not covered by the insurance policy issued in respect of the vehicle of the first opposite party. The learned Commissioner failed to see that under exhibit B2-policy there is no liability on the part of the 2nd opposite party to pay the compensation and that the terms and conditions of the policy and the provisions of the Motor Vehicles Act are violated. The seating capacity of the tractor is only one (driver) and no other employee such as cleaner or labourer is permitted to travel on the tractor. The facts and the evidence brought on record would show that the deceased traveled as an unauthorized passenger on a tractor which is a goods vehicle and, therefore, the 2nd opposite party is not liable and cannot be fastened with any liability to pay the compensation. The policy does not cover the risk of a labourer/passenger who was said to have traveled on the vehicle. The 2nd opposite party has not undertaken to cover the risk of passengers or labourers in the vehicle. In any view of the matter, the compensation awarded is high and excessive and the learned Commissioner erred in determining the compensation basing on the salary of the deceased though no evidence was adduced to prove the quantum of salary. The learned Commissioner ought to have taken into consideration the minimum wage payable under the Minimum Wages Act.

5. *Per contra*, the learned counsel for the applicants had contended as follows:

The deceased was employed as a coolie by the first opposite party on his tractor-trailer. The contentions now raised have no foundation in the pleading and no evidence was adduced in support of the contentions, which are for the first time being raised before this Court. While the deceased was travelling on the tractor-trailer, the said vehicle met with an accident and the deceased had died on the spot having succumbed to the injuries sustained by him. The accident had occurred near the fish tank of Mungara Nagamalleshwara Rao of Srungavarappadu. Thus, the deceased had died out of and during the course of his employment as a labourer and while travelling on the vehicle belonging to the first opposite party. The Insurance Company has a statutory liability, as the deceased is an employee and his death had occasioned out of and during the course of his employment as a labourer under the first opposite party. The deceased was aged about 19 years and was a coolie and was drawing a salary of Rs.2,500/- per month besides batta of Rs.50/- per day. The claimants had established their case by adducing necessary evidence. There is no rebuttal evidence, muchless worthy of credit. The learned Commissioner, having framed two issues, had considered the facts accurately and the evidence in proper perspective and had passed a reasoned order awarding compensation. No questions of law, much less substantial questions of law, are involved in the appeal. The well-reasoned order of the learned Commissioner does not call for any interference by this Court. Hence, the appeal, which is devoid of merit, is liable to be dismissed.

6. Now the points that arise for determination in this appeal are:-

1. **Whether the death of the deceased had occurred in a motor vehicle accident out of and during the course of his employment as a labourer on the tractor-trailer bearing registration nos. AP 37 V 1784 and AP 37 V 1785 belonging to the first opposite party and insured with the second opposite party?**

2. **Whether the insurance company is not liable to pay compensation under the facts and circumstances and in the light of the contentions urged by the insurance company?**

3. **Whether the impugned order is unsustainable under facts and in law?**

4. **To what relief?**

7. <u>POINTS:</u>

I have already stated the facts that had lead to the filing of this appeal and also the contentions of the learned counsel for both the sides, in detail.

7.1 The case of the applicants is this:

The applicants 1 and 2 are the parents of the deceased, Bale Nageswararao. The deceased, who was of 19 years of age and hale and healthy, was working as a loading and unloading coolie. During the course of employment he used to undertake travel in the vehicle for loading and unloading purposes. The first opposite party was having fish tanks and one tractor-trailer bearing registration nos. AP 37 V 1784 and AP 37 V 1785. Since two years prior to his death, the deceased was working as a loading and unloading collie on the said tractor-trailer of the first opposite party. On 08.12.2004 early hours the deceased and his colleagues started on the said tractor-trailer at Srungavarapupadu with 'transport fish packing materials' in order to go to Pydichinthapadu village to attend to fish packing work and loading at the fish tanks of the first opposite party at that place. On the way, the driver drove the vehicle at a high speed and in a rash and negligent manner and without following the traffic rules; as a result, the tractor-trailer had capsized near a fish tank of Mungara Nageswara Rao on Srungavarappadu to Pydichintapadu village road at about 04:00 AM on 08.12.2004. The deceased and two other coolies having sustained multiple injuries had succumbed to the injuries on the spot. On a report, the Station House Officer, Eluru Rural Police Station had registered a case in Crime No.265 of 2004 under Sections 304-A, 337, 201 r/w 34 I.P.C. The deceased used to earn Rs.2,500/- per month as salary besides Rs.50/- as batta and was contributing the same for the maintenance of his family. He was the sole bread winner of the family. Except the earnings of the deceased, there is no other source of income for the family. On the death of the deceased, the applicants have suffered irreparable loss and are starving. The said vehicle was insured with the 2nd opposite party. Therefore, both the opposite parties are liable to pay compensation of Rs.3,00,000/- with interest. The policy of insurance in respect of the vehicle is valid and covers the risk of the deceased who was engaged to do the work in the fish tanks and as a loading and unloading coolie by the 1st opposite party, who is the owner of the tractor-trailer.

7.2 The case of the 2^{nd} opposite party/insurance company is this:

The material allegations in the application of the applicants are false and the same are denied. The employment of the deceased on the vehicle of the first opposite party and his death out of and during the course of his employment and the manner of accident, his wage and age are all denied. The applicants are put to strict proof of the same. Even according to the case of the applicants, the deceased and the other coolies were said to be working as loading and unloading coolies under the first opposite party at his fish tank. Hence, they are not employed on the tractor-trailer said to be involved in the alleged accident. The policy in respect of the tractor-trailer does not cover the risk of the loading and unloading coolies working under the first opposite party, who were employed to work at his fish tank. No premium was paid to cover any liability of the coolies or workmen or loading and unloading coolies. The driver of the tractor-trailer is not having valid and effective driving license. Hence, the application may be dismissed.

7.3 The first applicant, in her affidavit filed in lieu of examination in chief, had affirmed the case of the applicants, as pleaded in their application. In her evidence, the copies of the FIR, the MVI's Report and the Charge sheet were exhibited as exhibits A1 to A3. While maintaining her stand in the cross-examination and denying the suggestions put to her in-line with the defence of the second opposite party, she had admitted that she had not filed any wage slip of the deceased to establish his wage and the employment under the first opposite party. A senior assistant of the second opposite party was examined as RW1. A letter authorizing him to depose in the matter and the copy of the insurance policy in respect of the tractor-trailer are exhibited as exhibits B1 and B2 and he had admitted that the policy was in force at the time of accident and that he has no personal knowledge of the accident and also the employer – employee relationship between the first opposite party and the deceased. But he had asserted the defence of the second opposite party in his examination in chief.

7.4 It is not in dispute that the first opposite party is the owner of the tractor-trailer involved in the accident and that the said vehicle was insured with the second opposite party and that as on the date of the accident, the policy was valid and was in force. The death of the deceased on the spot on account of the injuries sustained by him in the accident that had occurred while he was traveling in the tractor-trailer of the first opposite party is also not in dispute.

7.5 Dealing with the aspect as to whether the deceased was employed as a coolie/labourer by the first opposite party to do the fish packing work and also the loading and unloading work at the fish tank of the 1st opposite party, what is to be noted is that the applicants, having pleaded so and examined the first applicant as AW1 had adduced necessary evidence and translated their pleading into acceptable evidence. The said evidence finds sufficient corroboration from the contents of exhibits A1 to A3, the copies of the crime records. And, in the evidence of RW1, he had admitted that he has no personal knowledge about the employer-employee relationship between the first opposite party and the deceased. Having regard to the evidence, this Court is satisfied that there is employer-employee relationship between the first opposite party and the deceased.

7.6 Dealing next with the aspect as to whether the death of the deceased had occurred out of and during the course of his employment, what is relevant to note is that the 2nd opposite party contends that the labourers were engaged, even as per the case of the applicants, to work at the fish tank, but they were not employed as loading and unloading coolies or in any other capacity on the tractor-trailer which was involved in the accident and that therefore, the policy of the tractor-trailer does not cover the risk of the loading and unloading workers employed by the first opposite party to work at his fish tanks. Nevertheless, the evidence brought on record would show that the labourers including the deceased were employed on the tractor-trailer to go to the fish tanks i.e., the place of work and that they were going to the fish tanks for doing the work of packing fish and loading and unloading the packed fish. Therefore, the deceased and other labourers who were engaged for the above said work which includes loading and unloading, were travelling in the tractor-trailer towards the place of work at the time the accident had taken place. Therefore, it can safely be accepted that they were travelling in the tractor-trailer as labourers engaged by the 1st opposite party for a specific work which is also their usual work at the fish tanks.

7.7 Now, it is necessary to deal with the contention that the seating capacity of the tractor is one and that the tractor-trailer is a goods carriage, and that therefore, the deceased and others engaged as labourers ought not to have traveled on the said vehicle and that since they had traveled as passengers on a tractor-trailer, which is a goods carriage, the terms and conditions of the policy and the provisions of the law under the MV Act are violated and therefore, the 2nd opposite party is not liable to pay any compensation and that it is absolved from its liability, if any. *Per contra* the learned counsel for the applicants would contend that carrying labourers and unloading and loading coolies on the tractor-trailer is permissible when they are being carried on in connection with the loading and unloading work and, therefore, there is no violation of the terms and conditions of the policy or the provisions of the MV Act.

7.8 Before proceeding further, it is necessary to refer to the decisions brought to the notice of this Court by the learned counsel for the 2nd opposite party and the learned counsel for the applicants.

In ***The New India Assurance Co. Ltd Vs. Kurva Nagamma*** the facts are as follows: 'The owner of the tractor-trailer engaged the deceased as labourer on a monthly salary and the said deceased died in an accident during the course of his employment and that, therefore, the respondents 1to 4 therein, who are his wife and minor children, having filed a WC case, claimed compensation; the said vehicle was insured; the Insurance Company canvassed that the policy in respect of the vehicle covered the risk of the driver and no other employee and that, therefore, it is not liable to pay compensation to the applicants, who are the legal representatives of the deceased labourer.' This Court had set aside the order of the Commissioner *qua* the insurance company by allowing the appeal.

In ***New India Assurance Company Limited Vs. Lodya Shankar and another,*** 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.'

Coming next to the relevant legal aspect, in the decision in **Ramashray Singh v. New India Assurance Co. Ltd**., 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 khalsar. 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;**
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> **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 v. R.Siva Sankar Reddy** 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.

In **New India Assurance Co. Ltd. V. Suraya Bee** this Court following the ratio in Ramshray Singh (3 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 v. Kakaraparthi Anjali Devi** 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 learned 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 (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 decisions cited 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 **United India Insurance Company Limited, Nirmal v. Syed Anwar Ali and another** the facts of the cited case disclose that the insurance company sought to disown its liability on the ground that the claimant is the second driver. This Court held that under the provisions of the Motor Vehicles Act, 1988, the second driver can be treated as the person traveling during the course of employment at the time of accident and thus, the policy issued by the insurance company in respect of the vehicle covers his risk also.

In **Vachala and others Vs. V.R.Kumar and another** the facts of the case show that an auto-trolley met with an accident due to the rash and negligent driving of the driver of the said vehicle and that the deceased travelled in that vehicle as a representative of the owner of the goods and, therefore, it was contended that the insurance company is liable to pay compensation to the appellants; however, the insurance company contended that the insurance policy does not cover the risk of any passenger and that the seating capacity is only one meant for the driver and that any person other than the driver cannot travel in the auto-trolley and hence, the question of payment of compensation for the legal representatives of the deceased, who was said to have travelled as a representative of the owner of the goods, does not arise for consideration and that, therefore, the insurance company is not liable to pay compensation. In this background this Court held that when the insurer did not undertake to cover the risk of passengers in the offending vehicle, the question of its being made liable in respect of the risk of such passenger does not arise.

In the decision in **National Insurance Co. Ltd., Vs. Kottan** rendered by the Kerala High Court, the facts reveal that certain passengers travelled by a tractor and had suffered injuries in an accident. That tractor was not intended for travel of passengers or the goods. The Tribunal allowed the claim of the insured passengers and directed the insurance company to pay compensation. The seating capacity of the tractor, as per the registration certificate of the vehicle, is only one meant for the driver alone and the vehicle was not a public service vehicle, being a tractor. The High Court of Kerala, held that the decisions of the Apex Court in *New India Assurance Co. Ltd., Vs. Asha Rani {2003 (1) KLT 165 (SC)}* and *New India Assurance Company Vs. Satpal Singh {2000 (1) KLT 95 (SC)}*, do not advance the case of the insured passengers; and it was further held that the insurer cannot be held liable to compensate the passengers in a tractor as the policy does not cover their risk. Even the contention that the policy was a comprehensive policy and, therefore, it covers the risk of the passengers is also negatived by the High Court of Kerala.

In **Royal Sundaram Alliance Insurance Company Limited Vs. Eshwar and others** the facts of the case disclose that a tractor was insured for agricultural purposes only and was used for such purpose at the time of accident; therefore, the

Tribunal found that there was no breach of terms and conditions of policy of insurance. However, the question that fell for consideration was whether the liability to pay compensation could be fastened on the insurance company in a case in which the deceased who was travelling on the engine of the tractor at the time of accident had died as a result of a fall there from. The High Court of Chattisgarh at Bilaspur held that as the deceased travelled on the tractor by carelessly sitting on the engine of the tractor and had died as a result of a fall there from, the liability to pay the compensation squarely rested with the owner of the tractor; however, the High Court had allowed the appeal of the insurance company and directed the insurance company to initiate proceedings for recovery of compensation, if any, paid by it from the owner of the tractor.

In **Oriental Insurance Company Limited Vs. Sudhakaran K.V. and others** the Supreme Court while holding that a pillion rider of a two-wheeler cannot be treated as a third party and that the insurance company cannot be made liable, had held as follows:-

> **"Indisputably, a distinction has to be made between a contract of insurance in regard to the third party and the owner or the driver of the vehicle.**
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> **This Court in a catena of decisions has categorically held that a gratuitous passenger in a goods carriage would not be covered by a contract of insurance entered into by and between the insurer and the owner of the vehicle in terms of section 147 of the Act. [see *New India Assurance Co. Ltd., v. Asha Rani, 2003 (1) ALD 18 (SC) = 2002 AIR SCW 5259 = (2003) 2 SCC 223].***
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> **A Division Bench of this Court in *United India Insurance Co. Ltd., Shimla v. Tilak Singh and others* (supra), extended the said principle to all other categories of vehicles also, stating as under:**
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> **"In our view, although the observation made in Asha Rani case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant insurance company that it owed no liability towards the injuries suffered by the deceased *Rajinder Singh* who was a pillion rider, as the insurance policy was a statutory policy, and hence, it did not cover the risk of death of or bodily injury to a gratuitous passenger."**

In **United India Insurance Co. Ltd., Vs. Serjerao and others** the facts of the cited case show that certain labourers travelled in a tractor-trailer and that they had claimed compensation for the injuries sustained by them in the accident involving the said vehicle; however, the Insurance Company had contended before the Supreme Court that it has no liability in respect of the persons travelling in the trolleys attached to the tractors. The Apex Court held as follows:-

“So far as the question of liability regarding labourers travelling in trollies is concerned, the matter was considered by this Court in Oriental Insurance Company Ltd. Vs. Brij Mohan and Ors (2007 (7) SCALE 753) and it was held that the Insurance Company has no liability. In view of the aforesaid two decisions of this Court, we set aside the impugned order in each case and remit the maters to the High Court to consider the matters afresh in the light of what has been stated by this Court in Smt. Yallwwas case (supra) and Brij Mohans case (supra).”

In **National Insurance Co. Ltd. V. Prembai Patel**, 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.**
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> **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.**
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> **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. MANU/SC/0031/2002 : [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 MANU/SC/0212/1995 : [1995]1SCR871 and Amrit Lal Sood v. Kaushalya Devi Thapar MANU/SC/0209/1998 : [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."

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 a 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 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

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 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 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.

It is needless to mention that keeping in view the complexity of the contentions advanced by both the sides, this Court thought it fit to extract extensively the material portion from the judgment of the cited case rendered by a Bench of three Hon'ble Judges of the Supreme Court wherein the legal position was made explicitly clear.

7.9 In **Sanjeev Kumar Samrat v. National Insurance Company Limited**, the Supreme Court having referred to the decision in Prembai Patel (13 Supra) had held as under:

> **After discussing the schematic postulates of the provision, the Court ruled that where a policy is taken by the owner of the goods vehicle, the liability of the insurance company would be confined to that arising under the 1923 Act in case of an employer. It further observed that 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-sections (a), (b) or (c) of the proviso to Section 147(1)(b) may be fastened upon the insurance company and the insurer may become liable to satisfy the entire award. But for the said purpose, he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company is unlimited.**

Keeping in view the aforesaid enunciation of law and the ratios in other decisions, it was further held in this cited case as follows:

> **It is to be seen how the term "employee" used in Section 147 is required to be understood. Prior to that, it is necessary to state that as per Section 147(1)(b)(i), the policy is required to cover a person including the owner of the goods or his authorised representative carried in the vehicle. As has been interpreted by this Court, an owner of the goods or his authorised agent is covered under the policy. That is the statutory requirement. It does not cover any passenger. We are absolutely conscious that the authorities to which we have referred to hereinbefore lay down the principle regarding non-coverage of passengers. The other principle that has been stated is that the insurer's liability as regards employee is restricted to the compensation payable under the 1923 Act. In this context, the question that has been posed in the beginning to the effect whether the employees of the owner of goods would come within the ambit and sweep of the term "employee" as used in Section 147(1), is to be answered. In this context, the proviso to Section 147(1)(b) gains significance. The categories of employees which have been enumerated in the Sub-clauses (a), (b) and (c) of the proviso (i) to Section 147(1) are the driver of a vehicle, or the conductor of the vehicle if it is a public service vehicle or in examining tickets on the vehicle, if it is a goods carriage, being carried in the vehicle.**
>
> **24. 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 authorised 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. <u>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</u>**

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 authorised 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.

(Emphasis is by this Court)

7.10. Keeping in mind the law laid down by the Supreme Court, the liability or otherwise of the 2nd opposite party is to be determined in the instant case. The insurance company disowns its liability in this case on the basis of the contention that no premium was paid under the policy to cover the risk of the coolies/labourers/workmen as loading and unloading coolies. It is not in dispute that under the policy, basic premium, additional premium for trailer and premium to cover the risk of one employee, i.e., net premium of Rs.3,815/- was paid. As already noted and held, the deceased was traveling as a labourer on the tractor-trailer of the first opposite party to discharge his duties as a loading and unloading worker of the first opposite party. Be it noted that the tractor-trailer in the instant case is a goods vehicle/carriage. As the deceased, who was employed as a labourer for loading and unloading, had travelled in the tractor-trailer at the time of accident, the claimants, in the well considered view of this Court, are entitled to compensation as per the provisions of the Workmen's Compensation Act as the deceased was employed or engaged by the insured and a statutory policy covers the risk of employees of the deceased, either employed or engaged by him in a goods carriage. Having regard to the reasons and the ratios in the decisions of the Supreme Court in Prembai patel (supra) rendered by a Bench of three Hon'ble Judges of the Supreme Court and the later decision in Sanjeev Kumar Samrat's case (14 supra), this court finds that the contention of the insurance company that it is absolved from liability cannot be countenanced. Therefore, having regard to the reasons, this Court finds that the death of the deceased had occurred in a motor vehicle accident out of and during the course of his employment on the tractor-trailer bearing registration nos. AP 37 V 1784 and AP 37 V 1785 belonging to the first opposite party and insured with the second opposite party and hence, the learned Commissioner was justified in holding that the death of the deceased had occurred out of and during the course of his employment on the tractor trailer of the 1st opposite party, which is insured with the 2nd opposite party and that the risk of the deceased is covered by the policy and that both the opposite parties are, therefore, jointly and severally liable to pay compensation to the applicants.

8. There is one more aspect to be dealt with; and, it is on the aspect of the wage component and the quantum of compensation. The learned counsel for the 2nd opposite party would contend that the learned Commissioner had erred in determining the compensation basing on the salary of the deceased though no evidence was produced to prove the quantum of salary and that the learned Commissioner ought to have taken into consideration only the minimum wage payable under the Minimum Wages Act while determining the quantum of compensation. On the other hand the learned counsel for the applicants would contend that the wage component that was taken into consideration by the learned commissioner is only Rs.2,320.50/- per month and that it is far less than the amount required to make both ends meet in the present day cost of living and that the minimum wage GOs generally become stale and obsolete for not updating the wages and for non issuance of the GOs with revised rates of wages periodically and that therefore, the wage component as determined by the learned commissioner, which is fair and reasonable does not call for any interference in the facts and circumstances of the case. The Commissioner had referred to G.O.Ms.No.30 dated 27.07.2000 published in the Gazette wherein the wage of a mazdoor is Rs.1437/- + V.D.A as applicable from time to time. The Commissioner had also referred to the VDA payable during the period from 01.10.2004 to 31.03.2005 as 114 points and then arrived at the minimum wage at Rs.2,320.50 paise and had then proceeded to determine the compensation and had accordingly awarded Rs.2,61,312/- as compensation. Therefore, this Court finds no error in regard to the determination of wage component in the formula.

9. From the above discussion and for the foregoing reasons, this Court finds no error in the order of the learned Commissioner calling for interference. Further, no substantial questions of law are involved in this appeal. Viewed thus, this Court finds that the appeal is devoid of merit and is liable to be dismissed.

10. In the result, the appeal is dismissed. There shall be no order as to costs.

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

M. Seetharama Murti, J

14th November, 2015

Bvv