HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.345 of 2010

JUDGMENT:

The 3rd respondent-New India Assurance Company Limited among three respondents including respondents 1 and 2-owners of a van bearing No.AP 05X 2737, impugning the award of the tribunal in MVOP No.577 of 2008 dated 29.09.2009 in the claim maintained by the five claimants, no other than wife, minor children and parents of the deceased-Raghava, aged about 35 years as per Ex.A2-Post Mortem Report in the claim made for Rs.2,50,000/- under Section 166 of the Motor Vehicles Act (for short 'the Act'), since awarded by the tribunal of Rs.1,90,000/- with interest at 7.5% p.a. fixing the joint liability on the insurer, with the contentions that the award of the tribunal is unsustainable; failed to consider that the policy is an act policy and no way covers the risk of the persons to travel in the goods carriage; deceased is nothing but an unauthorized passenger and there is no coverage of such risk by any comprehensive policy contemplated under Section 147 proviso (II) of the Act.

2. Whereas, it is the submission of the learned counsel for the claimants that the award of the tribunal holds good and

for this Court while sitting in appeal, there is nothing to interfere and hence to dismiss the appeal.

3. Heard and perused the material on record.

4. From the very claim petition averments including from Ex.A1-FIR, it is clear that four persons engaged, for their fish/prawn seed to transport said goods, vehicle of respondents 1 and 2 of the claim petition and the deceased was one of the passengers travelling along with fish seed to provide oxyzen to fish in the transit. Even in the course of enquiry besides the 1st claimant, PW.2-cleaner of the crime vehicle also deposed that the deceased was operator in providing oxyzen to the fish seed travelling with the load on the fateful day i.e., 07.08.2007. The policy in question is an act policy. It refers to two employees to cover the risk under Workmen's Compensation Act. In fact, the deceased was not engaged by the owners of the vehicle, from the above factual matrix undisputedly and what the expression of the Apex Court in National Insurance Co.Ltd v. Prembai Patel[1] is that as per the proviso (I) clauses (a) to (c) of Section 147 of the Act, the act policy covers the risk of driver and incase of public passenger carriage the conductor, and a person be carried in the goods vehicle are being covered, however they

[1] 2005 (6) SCC 172

must be employees of the owner of the vehicle and not beyond. Here, once the deceased was not an employee of the owner and there is no policy coverage by any additional premium under Section 147(I) (II) proviso of the Act and the risk is not covered by the act policy under Section 147 proviso (I) clauses (a) to (c) of the Act supra and same is reiterated by the subsequent expressions of the Apex Court in Sanjeev Kumar Samrat v. National Insurance Company Limited[2]. and Manager, N.I.C. v. Sajju P.Paul[3], the tribunal is erred in fixing joint liability on the insurer to indemnify instead of exonerating. Thus, the award of the tribunal is liable to be set aside in fixing liability on the insurer but for confining only against the owners of the vehicle.

5. However, as laid down by the Apex Court in United India Insurance Company Limited v. Laxmamma[4], once the appeal is maintained by the insurer and pending appeal, any amount deposited and permitted the claimants to withdraw by the Court, the insurer is not entitled to recover from the claimants but for against the owners of the vehicle. Thereby, in filing the appeal by the insurer from depositing half of the amount, that was as per the direction of this Court since permitted to withdraw without furnishing any security and

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[2] (2014) 14 SCC 243
[3] 2013 SCC 41
[4] 2012(5) SCC 234

was withdrawn by the claimants, the insurer is not entitled to recover the same from the claimants but for against the owners.

6. Having regard to the above, the appeal is allowed by setting aside the award fixing joint liability and by exonerating the insurer in holding that the insurer cannot be made liable. However, half of the amount with interest if any deposited by the insurer while filing the appeal, that was pursuant to the direction of this Court on 18.03.2010 in permitting withdrawal of the amount by the claimants without furnishing security, to that extent the insurer cannot recover from claimants but for to recover from the owners of the vehicle. In other aspects, for the balance as per the award, the claimants have to proceed against the appeal respondents 6 and 7-owners of the vehicle i.e. claim petition respondents 1 and 2. No order as to costs.

7. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:01.11.2016
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