IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH

***

M.A.C.M.A.No.841 of 2010

Between:

The United India Insurance Company Limited

………Appellant

and

Bathina Ramanamma and six others

…….Respondents

Date of Judgment pronounced on : 13-12-2016

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes/No

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> HEAD NOTE:

! Counsel for the petitioners : Sri E.Venugopal Reddy

^ Counsel for the respondents : Sri Venkateswarlu Somisetty

? Cases referred

1. (2004) 8 SCC 697
2. (2005) 7 SCC 364
3. (2007) 7 SCC 56
4. (2014) 14 SCC 148
5. 2007 ACJ 1735
6. 2014 (1) SCC 244

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.841 of 2010

JUDGMENT:

The 3rd respondent insurer among the three respondents including the driver and owner of the tractor-trailer bearing Nos.AP-27-AA-5340 & 5341, in the claim maintained by 5 claimants, no other than wife, 3 minor children and brother-in-law of deceased Kotaiah aged about 45 years as per Ex.A3-PM report, of the claim in O.P.No.28 of 2009 on the file of Motor Accidents Claims Tribunal-cum-I Additional District Judge, Ongole, maintained under Section 163-A of the Motor Vehicles Act (for short 'the Act') for Rs.5,00,000/- from the contest by the insurer from the driver and owner remained exparte, saying the vehicle was not in use for agricultural purpose of the agricultural package policy covered by Ex.B1, it was for the neem tress cut branches loaded were taking for sale in the market which is a commercial purpose and the driver was having only LMV non transport driving license and it is the commercial purpose, he must possess a transport driving license, there is no coverage of risk for the deceased engaged the tractor-trailer belongs to 2nd respondent and deceased thereby not even a workman under the owner and there is no seating capacity on the trailer propelled to tractor for anybody to travel on the load and thereby insurer not liable, the Tribunal having held the accident was result of the rash and negligent driving of the 1st respondent driver, vehicle of the 2nd respondent insured with 3rd respondent, fixing joint liability holding that claimants are entitled to compensation and the deceased was traveling as owner of goods and the insurer cannot escape liability, same is impugned in the appeal.

2. The contentions in the grounds of appeal vis-à-vis the oral submissions of the learned counsel for the appellant/insurer are that the Tribunal gravely erred in not considering the several contentions raised by the insurer supra and fixing joint liability is unsustainable and there is no coverage of risk apart from the vehicle does not answer the meaning of goods carriage under Section 2(14) of the Act.

3. 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.

4. Heard and perused the material on record.

5. The goods carriage is defined under Section 2(14) of the Act to mean any motor vehicle constructed or adapted for use solely for carriage of goods, or any motor vehicle was constructed or adapted when used for the carriage of goods. The three Judge Bench expression of the Apex Court in **National Insurance Company Limited Vs. V.Chinnamma**[1] observed at Para 16 that carriage of vegetables being agricultural produce would lead to an inference that the tractor was used for agricultural purpose, but the same by itself would not be construed to mean that tractor-trailer can be used for carriage of goods by another person for his business activity. Thus, a tractor fitted with a trailer may or may not answer the definition of goods carriage contained under Section 2(14) of the Act. In fact in another three Judge Bench

[1] (2004) 8 SCC 697

expression of the Apex Court in **Natwar Parikh & Company Limited Vs. State of Karnataka & Others**[2] it was observed that motor vehicle includes any mechanically propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer, hence even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, tractor-trailer would constitute a goods carriage defined under Section 2(14) of the Act and consequently, a transport vehicle under Section 2(17) of the Act and the test to be applied in such cases is whether the vehicle is proposed to be used for transporting goods applying aforesaid test held tractor-trailer is goods carriage and consequently, transport vehicle and taxing authority has right in categorizing it as a separate assessable entity and in calling upon appellant to obtain permit. Thus, the three Judge Bench expression is very clear of tractor-trailer is a goods carriage within the meaning of Section 2(14) of the Act. In another two Judge expression of the Apex Court in **Oriental Insurance Company Limited Vs. Brij Mohan & Others**[3] referring to **Chinnamma Supra** and not referring to **Natwar Praikh supra** observed that the injured Brij Mohan was carrying in tractor and trailer which is a goods vehicle as gratuitous passenger and his risk is covered within the meaning of Section 147 of the Act being a labourer travelling on the trailer of the tractor carrying earth to brick kiln only a passenger and that too carrying of earth to brick kiln for preparing bricks is not an agricultural purpose. Coming to another three Judge Bench expression of the Apex Court in **Fahim Ahmad & Others Vs.**

[2] (2005) 7 SCC 364
[3] (2007) 7 SCC 56

United India Insurance Company Limited and Others[4], it was held that a tractor fitted with trailer as stated in **Chinnamma supra** may or may not answer, when carrying is not for agricultural purpose. In the three Judge Bench expression of **Fahim Ahmad supra** only **Chinnamma** referred and **Natwar Parikh** supra not referred in fact **Natwar Parikh** even subsequent to the three Judge expression of **Chinnamma supra**. What is the expression in Chinnamma saying the trailer propelled with tractor may or may not answer the definition of goods carriage is clarified by subsequent expression in **Natwar Parikh supra** though not referred in Chinnamma in categorical terms saying it answered the description of goods carriage and equally within the meaning of transport vehicle for trailer propelled to the tractor in use. Once such is the case, the tractor-trailer is goods carriage and also within the meaning of transport vehicle.

6. Now coming to the another aspect as held in Chinnamma and Brij Mohan supra, the person not engaged by owner of the vehicle insured for carrying goods is only passenger and not within the meaning of Section 147 to cover the risk by act policy. Here Ex.B10 is the agricultural package policy. The activity involved in the case of taking of the cut neem braches load engaged by the deceased with other coolies transporting to the market for sale as per Chinnamma supra, it is not connected with agricultural purpose, but for commercial purpose thereby policy not covered the risk. The permit is good for agricultural purpose and the license holding for agricultural purpose is LMV non transport and even the owner permitted for taking the neem branches for sale in

[4] (2014) 14 SCC 148

market by deceased instead of using for agricultural purpose and there is only any violation of permit and any violation of policy and so far as the deceased taking the vehicle for commercial purpose concerned, undisputedly policy not covered the risk. However, the fact remains it was while proceeding due to the rash and negligent driving of the driver of the tractor-trailer, it turned turtle and the deceased who was in the trailer fell on the road and it was after fall from the vehicle fallen, he was succumbed to the injuries while undergoing treatment with no lapse of time to the occurrence. Thus, though the deceased was unauthorized passenger, the death was not a direct result from the fall, but from the trailer with load of neem branches from which he fell down, that load with trailer fallen on him he sustained injuries and succumbed therefrom. Thus, though the deceased was unauthorized passenger originally, the moment he fell down he is a third party and the death is not because he fell down but the load branches of the trailer fallen on him and thereby 50% negligence can be attributed to the deceased and remaining 50%, the insurer can be made liable in the capacity of the deceased is a third party as the law fairly settled in the expression of this Court in **United India Insurance Company Limited Vs. Kurva Yejju Mallamma and Others**[5] with decisions referred therein.

7. From the above now coming to the quantum of compensation, the deceased was aged about 45 years as per Ex.A3-PM report the multiplier that is applicable to the claim under Section 163-A of the Act is ‘15’, the accident was dated 13.06.2008. The earnings of the deceased even as per **Kishan**

[5] 2007 ACJ 1735

Gopal & Another Vs. Lala & Others[6], from what schedule II of the Act is Rs.15,000/- per annum and it is just to take Rs.30,000/- per annum, if 1/3rd deducted towards personal expenses as per the schedule II of the Act Rs.20,000/-x15=Rs.3,00,000/- + Rs.9,500/- (towards loss of consortium, funeral expenses and loss of estate under Schedule II of the Act) comes to Rs.3,09,500/-/2=Rs.1,54,750/- the insurer is made liable to indemnify the owner.

8. Accordingly and in the result, the appeal is partly allowed by modifying the liability of Rs.3,45,500/- to Rs.1,54,750/-, however by enhancing the rate of interest from 6% to 7.5% per annum from date of petition till realization. The respondents shall pay or deposit the balance of any amount deposited, needless if excess already deposited to take refund or recover.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 13.12.2016
Note: L.R. Copy to be marked
(B/o)
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[6] 2014 (1) SCC 244