HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.Nos.655 & 656 of 2010 & 667 of 2011 & 990 of 2012

COMMON JUDGMENT:

The respondent Nos.2 and 3-insurer among the 3 respondents including the owner of the tractor-trailer bearing Nos.AP-36-V-2315 and 2316, maintained the appeals impugning the awards of the Tribunal dated 18.02.2009 in O.P.Nos.354, 356, 343 & 386 of 2007 respectively, the claims maintained by the respective claimants under Section 166 of the Motor Vehicles Act (for short 'the Act') for a compensation of Rs.1,50,000/-, Rs.1,50,000/-, Rs.1,00,000/- & Rs.1,00,000/- in O.P.Nos.354, 356, 343 & 386 of 2007. It is from the contest by the insurer for the 1st respondent owner remained exparte, the Tribunal having fixed joint liability awarded compensation of Rs.25,000/-, Rs.48,000/-, Rs.30,000/- & Rs.27,000/- respectively. It is impugning the said joint liability, the insurer maintained the appeals.

2. Heard the learned counsel for the appellants and also learned counsel for the respective claimants and perused the entire material on record relating to the 4 appeals.

3. It is the submission of the learned counsel for the insurer that there is only an act policy for agricultural purpose which does not cover the risk for the coolies and none of the claimants are covered by the act policy risk under Section 147 of the Act and the Tribunal gravely erred in fixing joint liability against the insurer instead of total exoneration.

4. Whereas it is the submission of the learned counsel for the claimants that the awards of the Tribunal hold good and for this Court while sitting in appeal there is nothing to interfere.

5. Ex.B1 is an Act Policy. Undisputedly, there is no additional premium paid much less covering the risk of coolies, apart from the permit and policy are only for agricultural purposes. There is no any evidence much less oral even of the vehicle while in use for agricultural purposes and for such purpose of attending of the goods, the injured was travelling in the said vehicle at the time of accident, even to cover an Act Policy as per the provisions of clauses 1(a) to (c) of Section 147 of the Act, for no additional premium paid under the proviso (II) of the Act. Once such is the case, the tribunal gravely erred in fixing joint liability on the insurer, instead of exoneration.

6. The law is fairly settled that once any amount deposited by the insurer and permitted to withdraw and the claimants have withdrawn, to that extent not to recover by the insurer from the claimants but from the owner of the vehicle.

7. Having regard to the above, the appeals are partly allowed by setting aside the award fixing joint liability and by exonerating the insurer in holding that the insurer cannot be made liable. However, any amount deposited by the insurer while filing the appeal, that was pursuant to the direction of this Court in permitting withdrawal by the claimants, to that extent the claimants are not liable but for the insurer to recover from the owner. In other aspects, for the balance as per the award, the claimants have to proceed against the appeal co-respondent, owner

of the vehicle i.e. claim petition 1st respondent-owner. No order as to costs.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 15.12.2016
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