HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.999 OF 2009

JUDGMENT:

Respondent No.2 - M/s. United India Insurance Company Limited is the present appellant.

2. Aggrieved over the order and decree, dated 05-12-2008, in M.V.O.P. No.1652 of 2007, on the file of the Chairman, Motor Accident Claims Tribunal - cum - VI Additional District Judge (III Fast Track Court), Warangal at Mahabubabad (for short 'the Tribunal'), whereby and where-under, a compensation of Rs.3,08,000/- was awarded with simple interest at 7.5% per annum as against the claim of Rs.3,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the death of one Mohd. Khaja, whose legal representatives are respondent Nos.1 to 4 herein, fastening joint and several liability on respondent Nos.1 and 2, who are owner and insurer, respectively, appellant preferred the present appeal under Section 173 of the Act on the ground that the deceased was travelling in an auto-trolley, which was only a goods vehicle and, thus, he was an unauthorized passenger, but the Tribunal overlooked the said fact despite the evidence of RW.1 and Exs.B-1 and B-2.

2. Respondent No.5 and the appellant herein, who are owner and insurer of Auto Trolley bearing registration No.AP 36V 8754,

respectively, are respondent Nos.1 and 2, while respondent Nos.1 to 4 are petitioners in MVOP before the Tribunal.

3. For the sake of convenience, the parties herein are hereinafter referred to as they were arrayed in the MVOP.

4. The basic facts that needed for disposal of the present appeal are, that on 07-01-2007, on the instructions of respondent No.1, his driver was proceeding in an Auto Trolley bearing registration No.AP 36V 8754 along with one Mohd. Khaja, having left at Mahabubabad to Thorrur, to bring empty carton boxes and when it reached the outskirts of Kachikal village at about 4.30 p.m., since the driver of auto trolley drove it in a rash and negligent manner at high speed and tried to give side for passage of opposite vehicle, he lost control over the auto trolley, which turned upside down, resulting in injuries to the said Mohd. Khaja. He was shifted to Thorrur Private Hospital and having given first-aid and again referred to M.G.M. Hospital, Warangal, where he succumbed to injuries at 9.15 p.m.

i) Due formalities were observed by the police concerned by registering a case against the driver of the auto trolley.

ii) The petitioners claiming that the deceased was earning Rs.4,000/- per month and aged 40 years, sought a compensation of Rs.3,50,000/- from respondent Nos.1 and 2, who are owner and insurer of the auto trolley.

5. Respondent No.1, owner of the auto trolley, filed counter stating that since the auto trolley was insured with respondent No.2, respondent No.2 is under obligation to indemnify and, therefore, sought to dismiss the claim petition against him.

6. Respondent No.2 - insurer while denying the averments mentioned in the petition, taken a specific plea that the driver alone was permitted to travel in the auto trolley as it is a goods carrying vehicle and the deceased was travelling as unauthorized passenger and, thus, accounts for violation of terms and conditions of the policy and, therefore, it is not liable to pay any compensation, hence, sought to dismiss the claim against insurer.

7. The following three issues were framed by the Tribunal about the responsibility for the accident.

8. In order to substantiate their claim, petitioner No.2 examined herself as PW.1 and an eye-witness to the occurrence as PW.2 and marked Exs.A-1 to A-5. On behalf of respondent No.2, its Administrative Officer was examined as Rw.1 and marked Exs.B-1 and B-2, which are copies of insurance policy and letter, respectively.

9. The Tribunal on appraisal of evidence of RW.1, observing that RW.1 did not indicate any denial of occurrence to the accident and involvement of the offending auto trolley, held that due to rash and negligent driving of the driver of the auto trolley, the accident has

occurred and recorded a finding in favour of the petitioners on issue No.1.

i) On issue No.2, the Tribunal having taken the plea of respondent No.2, that the deceased was travelling as unauthorized passenger and except the driver, no-one was permitted to travel in the offending vehicle since no seating capacity was provided in the auto trolley other than the driver and also referring to the contention of the learned counsel for the petitioners that the insurance policy marked as Ex.B-1 indicates that Rs.25/- was paid by respondent No.1 to cover the risk of 'WC to employee 1' apart from Rs.100/- paid to cover the risk of personal accident to owner-cum-driver, and since the deceased was working as hamali on the auto trolley, his risk is covered under policy, and placing reliance on the decision of this Court in **K. Arun Kumar and another v. M/s. Sri Ramdass Motor Transport Limited**[1], agreed with the submission of the learned counsel for the petitioners and recorded a finding that the payment of Rs.25/- to cover the risk of 'WC to employee 1' is sufficient to cover the risk of the deceased and saying so, held that the Insurance Company cannot evade its liability and, thus, held it against insurance company.

ii) The Tribunal then proceeded with determining the compensation; granting Rs.2,000/- towards funeral expenses; Rs.1,000/- towards transport charges; Rs.5,000/- towards loss of

[1]. 2007 (1) An.W.R. 504 (AP)

consortium and fixed monthly earnings at Rs.2,500/- as against Rs.4,000/- claimed by the petitioners, deducted 1/3rd amounting to Rs.833/- and the remainder, Rs.1660/- per month or Rs.19,920/- rounding off to Rs.20,000/- as the contribution to the family and applied multiplier '15' as the deceased falls in the age group between 40-45 years and arrived at Rs.3,00,000/- towards loss of life and dependency. Thus, a total compensation of Rs.3,08,000/- was granted by the Tribunal with interest at 7.5% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal by the Insurance Company contending that the auto trolley involved in the accident was only a goods vehicle and does not allow any other person to carry on the vehicle. But, the Tribunal, somehow, overlooked to consider the fact that the deceased was travelling as passenger in a goods vehicle at the time of accident and ignored the fact that there was no coverage covering the risk of passenger in the policy and did not properly appreciate the evidence of RW.1 and Exs.B-1 and B-2 and, therefore, sought to set aside the order and decree so far as the liability fastened on Insurance Company is concerned.

11. Heard Sri E. Venugopal Reddy, learned standing counsel for the appellant - respondent No.2, and Sri Y.N. Vivekananda, learned counsel for respondent Nos.1 to 4 - petitioners. Though,

service on respondent No.5 - respondent No.1 completed, none appears.

12. Perused the order and the material on record, both, oral and documentary, let in by the parties.

13. The learned counsel for the appellant would submit that the auto trolley since was a goods vehicle, the deceased was not allowed to travel in it and his risk was not covered by Ex.B-1 - policy, as terms therein would show that an amount of Rs.25/- was paid for one workman which was intended for the driver engaged by the owner of the auto trolley, and in case owner himself drives the auto, to cover his risk, a sum of Rs.100/- was paid. In the instant case, owner-cum-driver was not driving the vehicle and it was a driver, who was engaged by the owner, was driving the vehicle at the relevant time and, therefore, the amount of Rs.25/- paid to cover the risk of WC to employee 1 as indicated by Ex.B-1 is in relation to the risk of driver engaged by the owner. In such an event, the risk of the deceased is not covered and he has to be construed as unauthorized passenger which the Tribunal completely sidelined.

i) It is according to the learned counsel for the appellant that the decisions referred to in the order under challenge rendered by this Court, are not applicable to the fact-situation herein and the issue involved herein is squarely covered by the decision rendered by the

Hon’ble Supreme Court in **United India Insurance Co. Ltd. v. Suresh K.K. and another**[2] and sought to set aside the award and decree passed against it.

14. Per contra, the learned counsel for respondent Nos.1 to 4 - petitioners would submit that the insurance company has not examined any witness from the Road Transport Authority, nor filed registration certificate to show that seating capacity is only one and, therefore, the order under challenge cannot be faulted and does not warrant interference.

15. Thus, the short question that arises for consideration is,

> Whether the payment of Rs.25/- towards ‘WC to employee 1’ has got any reference to driver engaged by the owner, or whether it relates to employee engaged by the owner of the vehicle apart from the driver?

16. The Insurance Company is relying on Ex.B-2 contents. Ex.B-2 is a letter addressed by the Insurance Company to Mr. Mohd. Askar Ali - respondent No.1, stating therein that as per RC the seating capacity is one in all. Driver and one worker was travelling in the goods trolley at the time of accident, and the worker died in the accident and it is a violation of the policy conditions and, therefore, claim was closed as ‘no claim’. It appears that the said letter was

2. AIR 2008 SC 2871

issued when a claim was made by the petitioners with the Insurance Company. Thus, the insurance company is totally relying on the registration certificate, which is not filed into Court to clarify whether the payment of Rs.25/- covers the risk of 'any person' other than the driver hired or engaged by the owner. There is no clarity on the said aspect. This apart, the entries under vertical column 'make' in the first page of Ex.B-1 would show the words "BAJAJ DELIVERY VAN". So, it was an auto trolley or Bajaj Delivery Van is also not clarified. Thus, it is a case, where the matter can be remitted to the Tribunal for giving an opportunity to both sides to lead further evidence in addition to the evidence already let in by the parties respectively, in securing the registration certificate and examining the officials from the concerned departments for clarifying whether the seating capacity is 'one' or otherwise, or whether the payment of Rs.25/- covering the risk of 'WC to employee 1' relates to only the driver either hired or engaged by the owner, or any person other than the driver engaged by the owner.

17. In the result, the appeal is allowed, and the order and decree, dated 05-12-2008, in O.P. No.1652 of 2007, passed by the Tribunal are set aside, remitting the matter to the Tribunal with a direction to dispose of the matter within six (06) months from the date of receipt of a copy of this judgment, in accordance with law, as indicated in the above. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in this appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 22, 2016.
Mgr