HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.635 of 2010

JUDGMENT:

The 2nd respondent—insurer among two respondents including owner of tractor and trailor bearing Nos.AP 31 U 2258 and 2274, in M.O.P. No.1279 of 2006 on the file of VIII Additional District Judge-cum-Motor Vehicles Accident Tribunal (Fast Track Court), Visakhapatnam (for short 'the Tribunal') which is maintained by the claimants, no other than parents of the deceased by name I.Nanaji, aged about 20 years, under Section 166 of the Motor Vehicle Act, 1988 (for short 'M.V. Act') for compensation of Rs.4,00,000/- for the accidental death on 01.07.2006 at about 5.30 pm near Fire Station, Pedagantyada, Gajuwaka, Visakhapatnam District saying that while he was travelling on the load of Palmyra trees on the trailor propelled to the tractor supra to go to Gajuwaka to sell them along with other labourers engaged by him by name K.Apparao—PW.2, due to the alleged rash and negligent driving of the driver of the tractor, he fell down and crushed under the wheels and died on the spot. Gajuwaka Traffic police registered a case in Crime No.168 of 2006 against the driver of the tractor and trailor under Section 304-A IPC and from the contest of respondents including by 1st respondent saying the said tractor is being used for agricultural purpose and deceased engaged the tractor on hire basis for their transport. Therefrom, the Tribunal awarded compensation of Rs.3,17,000/- with interest at 7.5% per annum with joint liability of the insurer to indemnify the owner from the policy mentioned as special type of policy, which covers the risk of coolies. Impugning the award, the insurer maintained the present appeal.

2) It is the contention of the learned standing counsel for the insurer that the Tribunal gravely erred in not considering the factum of deceased was unauthorized passenger of the goods vehicle and not permitted to travel by sitting on the load of palmyra leaves on the trailor propelled to the tractor and there is no coverage of risk apart from no seating capacity on the trailor much less on the load, which is violation of permit and policy and the policy not even covers the risk as it is only Act policy though mentioned as special type for additional coverage of coolies under the owner and insurer and not for hire, much less for any commercial purpose even an agricultural product of taking palmyra leaves by cutting from fields for sale in commercial area, thereby the joint liability fixed on the insurer is unsustainable and the insurer is liable to be exonerated in toto and prayed to allow the appeal.

3) Whereas it is the submission of the learned counsel for respondents-claimants that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere and prayed to dismiss the appeal.

4) Heard both sides and perused the material on record. .

5) The law is fairly settled by several expressions including from the expressions of the Apex Court in ***National Insurance Company Limited vs Saju P.Paul***[1] and ***Sanjeev Kumar Samrat vs NIC***[2] that the insurer is liable to pay compensation only in respect of others for whom insurance premium is paid and not for each and every employee who might be travelling as gratuitous passenger in the vehicle concerned and particularly insofar as passenger's risk is concerned,

[1] 2013 ACJ 554
[2] 2014 (14) SCC 243

person traveling in goods vehicle and death of employee of hirer of goods concerned, Act policy only covers the risk of employees of hirer either employed or engaged by him in the goods vehicle. Section 147 of M.V Act does not cover the risk of hired employees of the hired goods.

6) A perusal of the policy though mentioned as special policy and it speaks cover of employees for which premium paid besides Act policy. So far as the deceased is concerned, as per the very claim petition averments, he engaged the tractor and trialor of 1st respondent on hire for carrying the palmyra leaves, by taking to Gajuwaka for sale and in the transit or in that process, he met with accidental death. Thus, from the policy there is neither act policy coverage for not a third party or any coverage of risk as employee under owner irrespective of what PW.2 by name Appa Rao deposed that as if the deceased was travelling as co-employee with him as this evidence cannot be weighed with any sanctity as it is running contrary to the very claim petition averments that the deceased taken the vehicle on hire and used the vehicle on hire.

7) Further even coming to the evidence of 1st respondent—owner of the vehicle of taking plamyra leaves even for sale in the market he engaged part of agricultural goods and the special policy covers for agricultural purposes otherwise covers the risk. The contention can be repealed by the expression of the Three Judge Bench expression of the Apex Court in ***National Insurance Company Limited vs V.Chinnamma***[3] that the tractor and trailor used for transportation to vegetable market is not in use for agricultural purposes.

[3] 2006 (4) ALT 698

8) Having regard to the above, the deceased was travelling on the trailor propelled to the tractor that too on the load of the palmyra leaves only as an unauthorized passenger of the goods vehicle for no coverage of policy risk and what the Tribunal observed as if the act policy covers the risk is *per se* unsustainable and is liable to be set-aside including from the subsequent Three Judge Bench expression of the Apex Court in ***National Insurance Company Limited vs Prem Bai***[4] and the subsequent expression in ***Sanjeev Kumar Samrat vs National Insurance Company Limited & others***[5]**,** wherein it categorically observed that policy must be comprehensive to cover the risk but not the Act Policy. There shall be no additional liability against the insurer to indemnify the owner on Act policy by reiterating the expression in ***National Insurance Company Limited vs Baljit Kaur***[6] etc.

9) Now the important aspect, which is not answered by the Tribunal and requires consideration is whether the deceased was travelling as unauthorized passenger or as a third party on the goods vehicle was he died as unauthorized passenger but as a third party. If the deceased was travelling as a third party, even act policy covers the risk as per Section 147 of M.V Act and from the expression supra, if he is not a third party but unauthorized passenger and after he fell down, the vehicle ran over the deceased undisputedly from the factual matrix, it requires consideration that he is a third party or not. Leave about, the deceased having travelled as unauthorized passenger till his fall, though met with death as a third party in such event.

[4] 2005 ACJ 1323
[5] 2013 ACJ 1
[6] (2004) 2 SCC 1

10) The Apex Court in ***Tmt Noorjahan vs Tmt Sultan Rajia @ Thaju***[7] referring to Section 95 of the Act, 1939 observed that the provisio (2) to Section 95 is omitted in the new Act, 1988. However, the accident was occurred in 1982, the old Act applies. Under the old Act there was liability to the extent of Rs.10,000/- to make the owner liable. In fact the expression did not deal with the distinction between the unauthorized passenger and a passenger at the time of boarding the vehicle including for passenger vehicle as in that case and after getting down or fall still or not. Learned standing counsel for the insurer placed reliance on the expression of this Court in ***The Oriental Insurance Company limited vs Kothakatta Ramanna***[8] saying such distinction from the place of boarding till the last station where to get down as alighting point he is to be treated as unauthorized passenger if not a passenger. In fact, in that case the bus in which the persons were travelling allegedly unauthorized for no premium paid to the persons to cover the risk getting down from the bus when bus giving starting trouble in transit at the hill area or at ghat road. Once the passengers get down they are not as passengers like other persons as third parties pushing the bus to cross the hill area to make it start and move still. In that expression held as unauthorised passengers, the distinction is not laid thereunder also, thereby that decision is in fact hit by *sub silentio* supra apart from distinguished from present facts. In this regard the legal position is very clear from the Judgments of the Madras High Court in ***Thoznihalar Transport Company V. Valliammal***[9]**,** ***A.Subrahmanian V. Mani***[10]**,** of the Delhi High Court in ***National***

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[7] 1996 (4) ALT 40
[8] 1997 (1) ALT 417
[9] 1990 ACJ 201 (Madras)
[10] 1990 ACJ 37 (Madras)

Insurance Co. Ltd V. Savitri Devi[11], of the Bombay High Court, Panaji Bench in ***I.O.C V. Edward B.Juj.R***[12] and another judgment of the Delhi High Court in ***Kanwar Shamsher Singh V. Satbir Singh***[13] and also of our High Court in ***United India Insurance Co. Ltd. V. Kurva Yejju Mallamma***[14] where it is held that the employees getting down at alighting point or at any stage before that from the vehicle is a third party and showing not continues to be as passenger. In the present case, the deceased was travelling by sitting on the load of palmyra leaves in the tractor and trailor insured under the Act policy and for coolies and not for owner of goods, thereby he is within the meaning of Section 147 provisio (1) clause (c) even under clause (2) there is no any contractual liability incurred. However, as laid down in Chinnamma (supra), there is violation of permit and the vehicle is for agricultural purpose and he was travelling for commercial purpose and risk is not covered. The permit violation otherwise prone to pay and recovery, if act policy covers the risk as per the Three Judge Bench expression of the Apex Court in ***Oriental Insurance Company Limited vs Swaran Singh***[15]. Leave about, overloading of goods by permit violation of the loading capacity of the vehicle *per se* not a ground to exonerate the insurer, even it is a permit violation as per the expression of the Apex Court in ***B.V.Nagaraju vs Oriental Insurance Company Limited***[16]**.** Leave it as it is, even taken the deceased was unauthorized passenger in the goods vehicle or otherwise he was negligent in sitting on the load of palmyra leaves and from his negligence that contributed to his fall or as an unauthorised passenger by fall from mix in difference in between the goods therefrom.

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[11] 1991 ACJ 991
[12] 1995 ACJ 1106
[13] 2006 ACJ 789
[14] 2007(1) ALD 364
[15] 2004 ACJ 1
[16] 1996 ACJ 1178

Once he fell down, the death is not happened therefrom and after fall he is a third party and once he is a third party and ran over under the wheels, he is entitled to claim as a third party even under the Act policy and not as owner of goods otherwise.

11) No doubt, but for his contribution in travelling on the load of palmyra leaves even as owner of goods with no seating capacity, his contribution can be considered to 50% and for remaining 50% the owner and insurer can be made liable as death is caused by crushed under the wheels as third party to that extent. From this the owner and insurer are liable not for the entire compensation but for 50% of the liability.

12) Now, therefrom coming to the quantum of compensation, there is no dispute that the deceased was unmarried and claimants are dependents and parents. The age of the mother among the two dependents is criteria and the age of the mother at the time of accident is between 41-45 years, as per the claim petition mentioned she completed 40 years. As the claim petition filed under Section 166 of M.V Act, the multiplier applicable is '14' as per ***Sarla Verma vs Delhi Transport Corporation***[17]. The earnings of the deceased concerned, there is no evidence. As per ***Latha Wadhwa vs State of Bihar***[18] in the absence of proof of earnings, the minimum earnings of the deceased can be taken at Rs.3,000/- per month as the accident is 5 years after the expression with prospective increase, it can be taken at Rs.3,500/- per month, if half deducted towards personal expenses, it comes to Rs.1,750/-. The loss of dependency comes to Rs.2,94,000/- (Rs.1750/- X 12 X 14). Apart from it, the claimants are entitled to Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate, in all it comes to

[17] 2009 ACJ 1298
[18] AIR 2001 SC 3218

Rs.3,29,000/- rounded to Rs.3,30,000/-. 50% therein comes to Rs.1,65,000/- is the just compensation payable by the respondents 1 and 2 i.e., owner and insurer.

13) Accordingly and in the result, the appeal is partly allowed holding that the Act policy not covers the risk for passenger to travel and even taken the deceased is owner of the goods, there is no permit for hire apart from the tractor is for agricultural purpose used for commercial purpose as defined in Chinnamma (supra), to say therefrom the policy not covers the risk. However, the death is not from travelling as unauthorized passenger. As it is while so, travelling fell from vehicle from his negligence and contribution, however, not died but ran over under the wheels of the trailor propelled to the tractor, thereby he is a third party at the time of death therefrom held the owner and insurer are liable for 50% of the compensation, which makes out to half of the compensation comes to Rs.1,65,000/- by so holding and setting aside the award of the Tribunal fixing compensation of Rs.1,65,000/- to that extent. In other respects the award of the Tribunal holds good. No order as to costs.

14) Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.07.12.2016
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HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते