HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.244 of 2010

JUDGMENT:

The 2nd respondent—insurer among two respondents including owner of lorry bearing No.AP 20 U 1863 in M.A.T.O.P. No.242 of 2005 on the file of Motor Vehicles Accidents Claims Tribunal-cum-V Additional District Judge (FTC) at Kothagudem, (for short 'the Tribunal') which is maintained by the injured claimant, under Section 166 of the Motor Vehicle Act, 1988 (for short 'M.V. Act') for compensation of Rs.1,00,000/- for the injuries sustained in the motor accident dated 18.03.2004 while the injured was travelling on the sand load in the lorry as labourers from Kothagudem Village to Manuguru and from alleged rash and negligent driving of the driver, the lorry turned turtle and the persons who sat on the sand load fell down and sustained injuries. From the contest by the insurer, as the 1st respondent remained *ex parte,* mainly saying the policy not covered the risk of any persons engaged for loading and unloading to travel much less on the sand load for not even employees under the owner, therefore, the insurer cannot be made liable. The Tribunal having held that the accident was the result of rash and negligent driving of the driver of the lorry and observed that the insurer is liable to indemnify as the policy is in force though RW.1 employee of the insurer deposed that there is no additional premium to cover the risk of coolies and Ex.B1—policy is a comprehensive policy to cover the risk of third parties. It is impugning the said award, the insurer maintained the present appeal.

2) It is the contention of the learned standing counsel for the insurer that the policy no way covers the risk of coolies and the Tribunal mislead the evidence of RW.1 and Ex.B1 and injured and other persons

travelling on the sand load either they are owners of the sand or not even workers under the owner much less under Workmen Compensation Act, as it is not Act policy, the comprehensive policy not cover the risk of any coolies and they have to be treated as unauthorized passengers of the goods vehicles from the settled expressions.

3) Whereas it is the submission of the learned counsel for claimants that the award of the Tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere with the award of the Tribunal and similar appeal was disposed of by another bench of this Court in M.A.C.M.A. No.1151 of 2009 with regard to the claim of another injured saying the policy is comprehensive policy and fixed joint liability.

4) Heard both sides. Perused the material on record.

5) The evidence of RW.1 and Ex.B1—policy are the main criteria in determining the lis as to the policy covers the risk of persons travelling on the sand load in the goods lorry even as workers for loading and unloading. Undisputedly, it is not the sand load of the vehicle much less engaged by owner. The Act policy as laid down by the Three Judge Bench expression of the Apex Court in ***National Insurance Company Limited vs Prembai Patel***[1] held that even Act policy does not cover the risk for workmen engaged by the owner of the vehicle for the purpose of loading and unloading without payment of additional premium as it covers under Section 147(1) Proviso (a, b & c) of driver of vehicle, conductor or ticket collector of public transport vehicle and representative of the goods in a goods carriage vehicle. The same is reiterated by the expressions of Apex

[1] 2005 ACJ 1323

Court in ***National Insurance Company Limited vs Saju P.Paul***[2]***,*** ***Sanjeev Kumar Samrat vs NIC*** no specific terms saying in the absence of additional premium in the policy to say for the benefit for coverage of risk under the contract, Act policy does not cover the risk otherwise that is laid down under Section 147 of the M.V Act by referring to Prembai supra.

6) A perusal of Ex.B1-policy even though comprehensive policy is enough in some respects, is not covered any specific premium undertaking by the contract from any payment to cover the risk of any persons for loading and unloading even to say for that they must be shown as employees working under the owner of the vehicle insured within the meaning of Workmen Compensation Act.

7) Once such is the case another bench of this Court has not properly read the policy as perincuriam apart from not before the Court to discuss further. Apart from it, the finding of the Tribunal is contrary to law as laid down by the expressions, thereby fixing of joint liability is unsustainable. However, it is made clear that while maintaining the appeal impugning the said finding of the Tribunal fixing joint liability instead of exoneration, the insurer shall pay half of the amount of the award subject to conditions of the award.

8) Having regard to the above, so far as the amount concerned, the insurer is entitled to recover from the owner of the vehicle and not from the claimant and beyond that the insurer cannot be made liable, thereby the appeal is allowed by holding that fixing joint liability against insurer by the Tribunal unsustainable and set-aside. However, made clear whatever the amount deposited is permitted to withdraw by the

[2] 2013 ACJ 554

claimant. The insurer is not entitled to recover from claimant but for from the owner. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.08.11.2016
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