HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.2129 AND 2131 OF 2009

COMMON JUDGMENT:

These two appeals are preferred by respondent No.1, owner of tractor and trailer bearing registration No.AP 20E 7349 and APW 4395, respectively, aggrieved over the orders and decrees, dated 12-03-2009, passed in O.P. Nos.1631 of 2003 and 1627 of 2003, respectively, by the learned Chairman, Motor Accident Claims Tribunal - cum - I Additional District Judge, Khammam (for short 'the Tribunal'), awarding a sum of Rs.27,500/- and Rs.29,500/-, respectively, mulcting liability only on him, while exonerating respondent No.2 - M/s. New India Assurance Company Limited.

2. The appellants and respondent No.2 herein, who are driver-cum-owner and insurer of tractor and trailer bearing registration Nos.AP 20E 7349 and APW 4395, respectively, are respondent Nos.1 and 2, respectively, while respondent No.1 is the petitioner in the OPs before the Tribunal.

3. For the sake of convenience, the parties herein are referred to as they were arrayed in the OPs. before the Tribunal.

4. Turning to the facts, on 01-07-2003, both the petitioners in the aforesaid OPs along with others were returning in a tractor and trailer after loading Chilli crop in the trailer, for unloading the same near the fields of one Karivedula Venkaiah and since respondent No.1 being the owner, also driven the said tractor and trailer in a rash and negligent manner and since he was unable to control it, the vehicle went off the road and turned upside down resulting in injuries to the petitioners. Hence, they laid claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') seeking Rs.1,00,000/- each as compensation against respondent Nos.1 and 2, owner and insurer of tractor and trailer, respectively.

5. Respondent No.1, driver-cum-owner of the tractor and trailer, remained *ex parte* before the Tribunal.

6. Respondent No.2 – insurer filed counter opposing the claim by raising various pleas.

7. The Tribunal framed three identical issues in both the O.Ps.

8. During inquiry, the petitioners respectively examined themselves as PW.1 and marked Exs.A-1 to A-6. On behalf of respondent No.2, its local branch officer was examined as RW.1 and marked Ex.B-1, coy of

insurance policy, in both the claim petitions.

9. The main resistance offered by respondent No.2 - Insurance Company was that the petitioners were travelling as unauthorized passengers and that the policy does not disclose payment of any premium for the persons travelling on the trailer and, therefore, it is not under obligation to indemnify the 1st respondent. The contentions raised by the learned counsel for the petitioners with reference to purport of Section 147 of the Act and the decisions relied on by them in **Devaiah and others v. Peddi Reddy and others**[1] and **Oriental Insurance Co.Ltd., v. Laxmamma and others**[2] were considered by the Tribunal, but risk of any person travelling in the trailer is not covered and coolies travelling by the trailer do not fall within the ambit of ‘third party’, dismissed the claim petition against the insurance company. Thus, the decrees were passed against respondent No.1, owner of the vehicle, to pay the compensation determined by it.

10. Aggrieved over the aforesaid orders and decrees, the instant appeals are preferred by respondent No.1 contending in the grounds that policy of insurance must be a policy to compensate goods and owner of the goods or his authorized representative carried in the

vehicle and damage to any third party caused by out of use of the vehicle in a public place was not taken notice by the Tribunal.

i) It is also stated that the petitioners were engaged for their own agricultural works as agricultural coolies and met with an accident when the tractor and trailer was carrying them and, therefore, the insurance company is liable to pay compensation, irrespective of the fact whether victims are gratuitous passengers carried on for hire.

ii) It is further stated that the Tribunal, somehow, did not observe the schedule of premium of insurance policy wherein it was clearly mentioned that 'liability to public basis; legal liability to driver, coolies/other employees in connection with the operation or maintaining or unloading of motor vehicle and premium on trailer was paid Rs.507/- + Rs.15/- + Rs.127/- respectively, and thereby insurance company became liable to compensate the coolies.

iii) It is stated that when the insurance coverage is in force, the insurer is covered by Section 147 (2) of the Act and, therefore, liable to pay compensation to the victims.

iv) Yet another ground is agitated adverting to the opinion tendered by the Tribunal stating that the Tribunal having accepted that the road was not in a good condition and with ups and downs, heaps of mud, the Tribunal cannot attribute negligence to the driver on guess work. Hence, sought to fix liability on respondent No.2 - Insurance Company.

11. Heard Sri G.L. Narasimha Rao, learned counsel for the appellant - respondent No.1, and Sri B. Narayana Reddy, learned counsel for respondent No.2 - Insurer. Despite service of notice, none appears for respondent No.1.

12. Perused the order and the material on record, both, oral and documentary.

13. A perusal of Ex.B-1, which comprised of two policies, one for tractor and the other for trailer and particulars therein would reflect that premium was paid for one employee in the policy issued in relation to the tractor; whereas, no premium was at all paid or collected to cover the risk of coolies. This has been taken note of by the Tribunal and, therefore, observing that the risk of coolies travelling by the trailer was not covered by the policy and the petitioners herein cannot be construed as third parties, rejected the stand of the 1st respondent.

14. The aforesaid reasoning adopted by the

Tribunal is based on appreciation of purport of the policy marked as Ex.B-1. Therefore, it cannot be said that the Tribunal went wrong in recording such a finding.

15. The submission of the learned counsel that the petitioners have to be construed as coolies and not unauthorized passengers or they were paid passengers is not convincing. In the decision relied on by the learned counsel, **Fahim Ahmad v. United India Insurance Co.Ltd.**[3], the facts would show that the deceased therein by name, Atma Singh was going from Kashipur crossing towards Tada Ujjain, and when he reached the Station Road in front of godown, a tractor having registration No.UP-21-H-4596 had been driven at high speed in a rash and negligent manner hit him from behind, as a result of which, he became seriously injured and died instantly. Since it was found that there was nothing on record to show that the tractor was being used for commercial purpose or purposes other than the agricultural purposes i.e., for hire or reward, as contemplated under Section 149 (2) (a) (i) (a) of the Act and also for the reason that the insurance company did not prove the plea raised in the written statement as to breach of the conditions of the policy, set aside the judgment under challenge so far as right to recover the amount awarded from the owner of the tractor was

concerned. That was a case where the person injured was not travelling in a tractor or trailer, but, in fact, he was hit by the tractor attached with trolley. Thus, the fact-situation is not akin to the one occurring herein.

i) The decision rendered by this Court in **New India Assurance Company Limited v. Voggani Chinna Venkataiah**[4] relied on by the appellant is again based on the decision in **Fahim Ahmad's Case** (Supra 3).

ii) The decision rendered by this Court in **Oriental Insurance Company Limited v. S. Ramanjaneyulu**[5] does not refer as to whether the premium was paid for the coolies or persons travelling by the trailer relating to the policy issued for the trailer. So is the case in **New India Assurance Company Limited v. Mamidi Mallamma**[6].

iii) In **Oriental Insurance Company Limited v. Janarasupally Kotiratnamma**[7], the trailer was not insured, but only the tractor was insured. In that context, this Court held that the insurer is liable to pay compensation only if both tractor and trailer are insured, but, however, the aspect in regard to the absence of payment of any premium, for the persons travelling by the trailer was not in question.

iv) In **Divisional Manager**, **National Insuranc**e

Company Limited v. Sayyadama[8], the High Court of Karnataka dealt with the provisions of Rule 28 of the Karnataka Motor Vehicles Rules, 1989 and held that in the case of tractor, the driver alone is permitted, and carriage of any passengers in a tractor is prohibited and the policy of insurance does not cover the risk of coolies carried in a tractor without trailer, set aside the award made against the insurer. But, the details as regards whether the trailer was insured and the premium paid to cover the risk are not forthcoming.

v) In **Angadi Nagappa v. the Divisional Manager, IFFCO-TOKIYO, General Insurance Company Limited**[9], the claim was under the Workmen Compensation Act.

16. A perusal of Ex.B-1 shows that the policy was issued for the period from 00:00 O' Clock on 10-04-2002 to midnight of

09-04-2003 with policy No.618902/31/02/00262, and the basic premium being paid was Rs.507/- and premium for trailer a sum of Rs.127/- was paid and covering the risk of one employee Rs.15/- was paid. In fact, a definite plea was taken by the respondent No.2 that no premium was collected for the risk of the coolies over the trailer and the evidence of RW.1 is also to the same effect proving the said plea. Therefore, the finding recorded by the Tribunal that the risk of the petitioners was not covered and thereby dismissing the claim petitions against the insurer cannot be faulted, as it does not suffer from any legal infirmity warranting interference. Thus, there is no merit in the instant appeals.

17. In the result, both the appeals are dismissed. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeals, stand disposed of.

A. SHANKAR NARAYANA, J

August 01, 2016.
Mgr

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[1]. L.C.ACR 2004 (1) AP 207
[2]. II (2005) ACC 228
[3].
[4]. 2015 (3) ALT 103
[5]. 2011 (5) ALT 24
[6]. 2001 (4) ALT 554
[7]. 1999 (6) ALT 745
[8]. 2006 ACJ 2662
[9]. 2015 (3) LAWS (KAR) 422