HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.3109 OF 2005

JUDGMENT:

The appellant, who is the father of the deceased by name Naresh, unmarried, is the claimant in the M.V.O.P.No.217 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal–cum-XI Addl. District Judge, Fast Track Court (for short, 'the Tribunal'), Guntur at Tenali maintained under Section 166 of the Motor Vehicle Act,1988 *(for short, 'the Act')*, for the claim of Rs.1,60,000/-(Rupees one lakh sixty thousand only) against owner and Insurer of the crime vehicle (lorry bearing No. AEK 1166) for the accident dated 29.04.2001 caused by rash and negligent driving of the driver of crime vehicle, preferred this appeal impugning the award dated 12.08.2005 passed by the tribunal with the contentions in the grounds of appeal that the tribunal failed to appreciate that the deceased was working as a coolie for the purpose of loading and unloading bricks at the time of accident and as such ought to have fastened liability on the Insurer, that the tribunal ought not to have held as the deceased was a gratuitous passenger, that the tribunal ought to have held that the deceased and others covered by policy since the 1st respondent using the vehicle by engaging them for loading and unloading, hence to set aside the award passed by the tribunal.

2. The averments of the claim petition are that while the deceased, as a cooli under 1st respondent for loading and unloading bricks, was traveling in the crime lorry from Kolluru to Dasannapalem of Nagaram Mandal, along with other coolies, and when the lorry reached Dasannapalem outskirts, due to the rash and negligent driving of the lorry driver, the lorry turned turtle and the deceased sustained injuries and succumbed at the spot though other coolies sustained simple injuries covered by Cr.No.38 of 2001. Ex.A.1 is First Information Report, Ex.A.2 is inquest report, A.3 is Postmortem report, A.4 is chargesheet and the claimant is examined as P.W.1 and cause

examined two more witnesses as P.Ws.2 and 3 on his behalf in proof of the manner of the accident. R.W.1 is employee of Insurer who placed reliance upon the documents viz; copy of policy as Ex.B.1 which shows only an act policy, particulars of the permit issued by RTA as Ex.B.2 besides the Ex.B.3 registered notice of Insurer issued covered by Ex.B.4 acknowledgment to the owner-insured saying the deceased and others were allowed as coolies for loading and unloading in the vehicle and the Insurer cannot be made liable. It is from said evidence, the tribunal exonerated the Insurer and fixed liability only on the owner of the vehicle by awarding the compensation as claimed of Rs.1,60,000/- with interest at 7.5% p.a. It is impugning the same, present appeal is filed.

3. Heard the learned counsel for the appellant/claimant and also the learned counsel for the 2nd respondent Insurer and perused the material on record.

4. On perusal of the claim petition averments, it shows while the deceased as one of the coolies was traveling in the crime vehicle for unloading bricks, the accident occurred due to the vehicle turned turtle and as a result, the deceased who fell down under the vehicle was succumbed therefrom. The Ex.A.1 FIR speaks the lorry turned turtle and the deceased was underneath the lorry at the cabin, whereas, the inquest report speaks from para-7 of he was succumbed due to fallen down from the cabin underneath the vehicle on its turned turtle and from crush injuries and para-4 of inquest report speaks he was traveling for unloading and died because of the vehicle turned turtle. The claim petition averments show he was traveling along with other coolies. Para-9 of the Inquest report speaks that they were traveling on the body of the vehicle, whereas, the FIR shows the deceased was lying crushed underneath the cabin. Whatever it may be, the claim made is as a cooli under the 1st respondent-insured. The policy, being an act policy, from its perusal no way covers the risk of any cooli for

loading and unloading to travel. Though an attempt later was made with improvement in the evidence of deceased was representative of the owner of the bricks load that is not the specific claim of traveling as owner or representative of the bricks to say act policy even covers the risk for such contingency under Section 147 of the M.V.Act from the clear expression in this regard of the Apex Court in **National Insurance Company Limited Vs. Prembai Patel[1]. O**therwise, but for policy covers the risk from collection of premium, the Insurer cannot be made liable that what is clearly laid down by the expression of the Apex Court particularly in **National Insurance Company Vs. Sanjeev Kumar Samrat**[2]. Here even taken for arguments sake from the material on record of deceased was not shown traveling in the cabin much less owner or representative of the goods, for cooli, even under the insured within the meaning of workmen, not covered by policy risk by any collection of premium, from the act policy under Section 147 of the M.V.Act, not covered the risk. From the expressions supra even though he was traveling not as authorized covering the risk by the policy, it is not because of that he was succumbed, but for the lorry turned turtle and after fallen down from the vehicle, the vehicle fallen on him and he was thereby crushed underneath the vehicle to say he was died as third party though initially unauthorized. The law is fairly settled in this regard that on the movement he fell down, he is a third party. Once he is a third party, the policy covers risk, however, for the unauthorized traveling, the question of his dying underneath the vehicle turned turtle could not be outcome to say 40% composite negligence on the part of the deceased to travel at the instance of the owner to make the owner liable to that extent for no liability to indemnify by the Insurer; but for 60% remaining liability of the owner and Insurer as per the settled law from the expressions in **A.Subramani Vs. Mani[3] Thoz Nilabar Transport Company Vs. Valiammal[4], National Insurance Company Limited Vs.**

Savitridevi[5]**, Oriental Insurance Company Limited Vs. Edward NcruizR**[6]**, Panaji Bench, Kanwar Samsher Singh Vs. Satbir Singh**[7] and **United India Insurance Company Limited Vs. Koravi Yejji Mollamma**[8] holding that the moment destination reached ceased the status of passenger and likewise the moment fell down even while getting down, ceased status of passenger even till then risk not covered, from the fall when under wheels he is a third party to make the Insurer liable.

5. From that coming to the quantum of compensation the deceased was shown aged 18 to 20 years and the claimant is the father of the deceased shown aged 43 years. The dependency is in the lifetime of his father and the multiplier that is applicable for a person aged between 41 to 45 is 14 as per **Sarla Verma v. Delhi Transport Corporation**[9]**. The** earnings of the deceased as on the date of accident 29.01.2001 even taken Rs.2,700/- per month or what was earned per day if half deducted towards personal expenditure for the deceased was unmarried and sole dependent was the father even as per Sarla Verma supra, iot comes to Rs.1,350/-x12x 14(multiplier)= Rs.2,26,800/- + Rs.35,000/-(Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate) in all comes to Rs.2,61,800/- rounded to Rs.2,62,000/- for which the appellant/claimant is entitled to 40% therein of Rs.1,04,800/- exclusively against by the 1st respondent-owner of the vehicle and for remaining 60% (Rs.1,58,000/-) the owner and the Insurer (both the respondents) are also. The claimant is entitled to the compensation respectively with interest at 7.5% p.a.

6. In the result, the appeal is allowed in part by enhancing the compensation from Rs.1,60,000/- to Rs.2,62,000/- (Rupees two lakhs sixty two thousand only) by confirming the rate of interest at 7.5% p.a. and out of that, the 1st respondent-owner is liable to pay 40%

(Rs.1,04,800/-) of compensation and the remaining 60% (Rs.1,57,200/-) the 2nd respondent-Insurer to indemnify the 1st respondent-owner. They are liable to pay the same with interest at 7.5% p.a. from the date of claim petition till realization. The claimant is entitled to the enhanced compensation (Rs.1,02,200/-) only subject to payment of deficit Court fee under Rule 475 of the A.P. Motor Vehicle Rules before the tribunal and to withdraw also. The respondents shall pay or deposit their respective shares of compensation within one month from the date of receipt of the order. Failing which the claimant can execute and recover, however, without payment of deficit court fee supra the claimant cannot execute and recover. There is no order as to costs in the appeal. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 23.03.2016
Vvr

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[1] LAWS(SC)-2005-4-59

[2] 2013 ACJ page 1

[3] 1990 ACJ 37 Madras

[4] 1990 ACJ 201 Madras

[5] 1991 ACJ 1991 Delhi

[6] 1995 ACJ 1106 Bombay

[7] 2006 ACJ 789 Delhi

[8] 2007 (2) ACK 366

[9] 2009 ACJ 1298