SMT. JUSTICE T.RAJANI

<u>MACMA. No.137of 2006</u>

<u>JUDGMENT</u>:

This appeal is preferred by the appellant, M/s.New India Assurance Company Limited, who is the 2nd respondent before the Court below, assailing the order of the Additional District Judge at Nizamabad passed in O.P. No.668 of 1998 on 19.12.2002 on the grounds that the Court below ought to have seen that the deceased was traveling as a gratuitous passenger and the policy did not cover the risk of passenger and therefore, the appellant herein is not liable to pay any compensation.

Heard the learned counsel for the appellant and the learned counsel for the respondents-claimants and perused the material on record.

A perusal of the judgment of the Court below shows that at paras 15 and 16 it took up the discussion with regard to the coverage of risk of the deceased and fastened liability. The deceased is stated to be a Cleaner. The learned counsel for the appellant herein contends that there should be coverage of risk for Cleaner and in this case Ex.B-1, copy of Insurance policy, does not cover the risk of a Cleaner. The insurance policy filed by the appellant herein was marked before the Court below as Ex.B1 and was also shown in the appendix evidence in the judgment. But strangely in the un-numbered paragraph under paragraph 15, the Court below observes that it takes into consideration the submission made by the learned counsel before the Court which is that no documentary evidence is placed before the Court by the appellant herein to show that the appellant herein is not liable to pay compensation for the Cleaner. Without there being any discussion the Court below quickly came to the conclusion that both the respondents before the Court below are jointly and severally liable to pay the compensation. It does not say that the contention of the petitioner is not correct in the light of marking Ex. B1.

The learned counsel for the appellant herein placed reliance on the ruling of the Apex Court in the case of **RAMASHRAY SINGH v. NEW INDIA ASSURANCE CO.LTD.AND OTHERS**[1] wherein the Apex Court at para 7 held as under:

> "7. The relevant extract of Section 147 is reproduced with emphasis on the words on which the appellant's case rests:
>
> "147. *Requirements of policies and limits of liability*.-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which;
>
> (a) * * *
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-
>
> (*i*) against any liability which may be incurred by him in respect of the death of or bodily injury to **any person** or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
>
> (*ii*) against the death of or bodily injury to **any passenger** of a public service vehicle caused by or arising out of the use of the vehicle in a public place;
>
> Provided that a policy shall not be required
>
> (*i*) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the

1 (2003) 10 Supreme Court Cases 664

> Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee-
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> (*a*) engaged in driving the vehicle, or
>
> (*b*) if it is a public service vehicle engaged **as a conductor** of the vehicle or in examining tickets on the vehicle, or
>
> (*c*) if it is a goods carriage, being carried in the vehicle, or
>
> (*ii*) to cover any contractual liability." (emphasis supplied)

In the above cited ruling, the Apex Court observed that over and above the risks, which are covered by Section 147 parties may of-course enter into the contract by which insurer agrees to cover additional risk. In the instant case also it is not the case of the respondent that apart from the policy of the insurance there was any contract between the insured and insurer. Ex.B-1 herein shows that risk of Cleaner is not covered and when admittedly the deceased is a Cleaner the Insurance Company cannot be mulcted with any liability. Hence, the award of the Court below to the extent fixing liability on the appellant herein needs to be set aside and is as such set aside, thereby, fixing liability of satisfying the award on only respondent No.1 before the Court below, who is the 4th respondent herein.

The learned counsel for the appellant herein also submits that as directed by this Court earlier they have deposited 50% of the awarded amount and this Court also permitted the claimants to withdraw the same and seeks that they may be given liberty to recover the said deposited amount from the 4th respondent herein, who is the 1st respondent before the Court below. Consequent to exonerating the appellant herein from its liability, the appellant herein is given liberty to recover the amount that was deposited by them from the 4^{th} respondent herein, who is the 1^{st} respondent before the Court below.

In the result, the appeal is allowed but under the circumstances there shall not be any order as to costs.

JUSTICE T.RAJANI

Date: 14.07.2017
LSK