THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A Nos. 909, 955, 956, 948, 968 and 1143 of 2010

COMMON JUDGMENT:

The New India Assurance Company Limited (for brevity, "the insurance company") has preferred MACMA.Nos.909, 956 and 955 of 2010, challenging the common order and decrees dated 07.01.2010 passed by the Motor Accidents Claims Tribunal-cum-III Additional District Judge at Nandyal, Kurnool District (for brevity "the Tribunal") in M.V.O.P.Nos.276, 277 and 278 of 2007, respectively. The insurance company has also preferred MACMA Nos.948, 1143 and 968 of 2010 challenging the common order and decrees dated 07.01.2010 passed by the Tribunal in M.V.O.P.Nos.422 and 420 of 2007 and M.V.O.P.No.6 of 2008, respectively.

2. The brief facts of the case in common are that on 24.04.2007, the deceased and the injured were traveling as Hamalies on the tractor-trailer bearing No. AP-21H-9938/9937 owned by the 1st respondent, for transporting Napa stones for the purpose of construction of a shed in the land of the 1st respondent, for keeping the electric motor. The tractor-trailer was insured with the 2nd respondent-insurance company. On the fateful day, while the deceased and the injured and other labourers were proceeding on the tractor-trailer, the driver of the tractor-trailer drove it in a rash and negligent manner at a high speed due to which the tractor-trailer turned turtle at the outskirts of

Akumalla village. Some passengers received injuries, and some passengers died on account of receiving grievous injuries. The legal representatives of the deceased have filed the claim petitions seeking compensation of Rs.3,00,000/- each, with costs and interest. The petitioners, who are injured have filed the claim petitions claiming compensation of Rs.50,000/- each, with costs and interest for the injuries sustained by them in the accident.

The 1st respondent, who is the owner of the tractor, had remained exparte.

The 2nd respondent, who is the insurer, contested the claim petitions by filing counter denying its liability and stating that the liability of the insurer is subject to the terms and conditions of the insurance policy. It is also stated that as per the insurance policy the tractor-trailer was permitted to be used for agricultural purposes only. Since the tractor-trailer was used for transporting Napa slabs, which is a commercial purpose, and further as no additional premium was paid for covering the liability of Hamalies, the insurance company is not liable to pay compensation to the claimants.

The Tribunal, on a consideration of the pleadings of both the parties and the evidence available on record, vide common order and decree dated 07.01.2010, allowed M.V.O.P.Nos.276 and 277 of 2007 by granting compensation of Rs.3,00,000/- as prayed for, while partly allowing M.V.O.P.No.278 of 2007 by granting a sum of Rs.1,94,800/- as against the claim of Rs.3,00,000/-, payable by respondent Nos.1 and 2.

The Tribunal had partly allowed M.V.O.P.Nos.422, and 420 of 2007, and M.V.O.P.No.6 of 2008, granting a sum of Rs.20,000/-, Rs.13,350/- and Rs.15,500/-, respectively, towards compensation as against their claim of Rs.50,000/- each, for the injuries sustained by the claimants.

Aggrieved by the same, the insurance company filed the above appeals.

3. Heard the learned Standing Counsel for appellant-insurance company, and the learned counsel for respondents-claimants.

4. The learned Standing Counsel for the insurance company submits that as per Section 173 of the Act, the insurer is entitled to take all the defences available to it. It is further submitted that the driver of the offending tractor did not possess valid driving licence to drive the vehicle and hence the insurer is not liable to pay compensation.

It is also submitted that as per the terms and conditions of the insurance policy, the offending tractor was exclusively permitted to be used for agricultural purposes, and since the said vehicle was used for transporting Napa stones for construction of shed, which use comes under a commercial purpose, the insurer is not liable to pay compensation. In support of her contention, she placed reliance on a decision of this Court in **D.M., New India Assurance Co. Ltd., Nizamabad v. G. Papaiah**[1] and contended that, if the vehicle is not

[1] 2015 (4) ALD 164

used for agricultural purposes, the insurer is not liable to pay compensation.

Placing reliance on the decision of the apex Court in **Ramashray Singh v. New India Assurance Co. Ltd. and Others**[2], the learned Standing Counsel further submitted that since no additional premium was paid covering the risk of hamalies who travelled on the offending tractor, the insurer has no contractual liability under the policy to pay compensation. She further argued that there is no evidence on record to show that the deceased/injured travelled in the tractor as Hamalies for loading and unloading purpose. In the alternative, it is further submitted that the deceased and the injured travelled as gratuitous passengers and, therefore, the insurer is not liable to pay compensation as there is a breach of the terms and conditions of the Insurance Policy.

In this regard, learned Standing Counsel for the insurance company placed reliance on the decisions reported in **New India Assurance Company Limited v. Asha Rani**[3] and **National Insurance Company Limtied v. Bommithi Subbayamma**[4], and submitted that the insurance company has no Statutory liability to cover the risk of gratuitous passengers traveling in a goods vehicle, and this position has not been altered by 1994 Amendment to Section 147(1)(b) of the Act, as held in **National Insurance Co. Ltd. v. Baljit Kaur**[5]. Therefore, it is argued that the deceased travelled in the offending tractor as gratuitous passengers and therefore there is no coverage of their risk.

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[2] 2003 (1) Decisions Today (SC) 632
[3] (2003) 2 SCC 223 : AIR 2003 SC 607 : 2002 AIR SCW 5259
[4] 2005 ACJ 721 : (2005) 12 SCC 243
[5] (2004) 2 SCC 1

5. Per contra, the learned counsel for the respondents-claimants contended that the Tribunal held that the tractor was carrying Napa slabs for construction of a shed in the agricultural land of the owner. Therefore, it cannot be said that the tractor was not used for agricultural purpose. It is further submitted that the insurance policy is a comprehensive policy which covers the risk of the hamalies who travel on the tractor for loading and unloading of Napa slabs and hence there is no violation of the terms and conditions of the policy.

6. It is pertinent to note that the Tribunal, on consideration of the evidence on record, held that the tractor was used for agricultural purpose at the time of accident. The findings recorded by the Tribunal cannot be accepted as the use of the tractor at the time of accident was not for agricultural purposes. It was for other than agricultural purpose. Therefore, there is no coverage of risk under the insurance policy for such use. The insurance policy was meant to cover usage of the tractor for agricultural purposes only.

7. The Tribunal has given a categorical finding with regard to the capacity in which the deceased and the injured travelled in the tractor-trailer. The Tribunal held that they travelled as Hamalies. The Tribunal based its findings on the evidence of P.Ws.1 to 4, out of whom PWs.1 to 3 are Hamalies, who travelled on the tractor-trailer and P.W.4 is an independent witness. In fact, the evidence of the hamalies and independent witness show that the vehicle was used for transporting

Napa slabs for construction of a motor shed. Definitely the purpose for which the tractor-trailer was used was for a non-agricultural purpose. The said finding does not require any interference. Therefore, the contention of the appellant that they traveled in the tractor-trailer as gratuitous passengers cannot be accepted. Therefore, I do not find any reason to set aside the said findings of the Tribunal, as the same are based on the evidence of PWs.1 to 4.

8. This Court, no doubt, rendered the decision in **G. Papaiah (1 supra)** which is a case where a tractor-trailer, in which the workman travelling as a labourer for loading and unloading, met with an accident and in that case, the insurance company was held not liable as the policy was an Act policy, which was issued permitting the tractor-trailer to be used for agricultural purposes. It is obvious that no separate premium was paid for coverage of risk of the labourers working under the contractor. Therefore, the said decision is applicable to the facts of the present case.

9. Learned counsel for the claimants contended that the deceased and the injured did not travel in the tractor as gratuitous passengers, but they travelled as Hamalies, and the said fact has been upheld by the Tribunal by placing reliance on the evidence of PWs.1 to 4 and hence the decisions relied upon by the learned Standing Counsel are not applicable to the facts of the present case.

10. Now, it is to be seen whether there is any coverage of insurance for the Hamalies who travelled in the tractor. In this regard, it is appropriate to refer to Ex.B1-insurance policy to ascertain whether there is any extra premium paid for coverage of the risk of Hamalies travelling in the vehicle. It is also appropriate to refer to the evidence adduced on behalf of the Insurance Company before the Tribunal.

11. RW1 is a Senior Assistant working in New India Assurance Company Limited. His testimony reveals that Ex.B.1 is a Special Type of Vehicle Policy 'B' Package Policy. According to him, the deceased and the injured travelled as gratuitous passengers and not as Hamalies or coolies on the tractor. This finding has been negatived by the Tribunal, which is upheld by this Court in the foregoing discussion. RW1 further stated that the tractor was permitted to be used for agricultural purpose only as per the terms and conditions of insurance policy. He also stated that as the tractor was used for commercial purpose for transportation of Napa Slabs from quarries, it is in violation of the permit conditions. He has denied that the purpose for which the Napa Slabs were carrying on for construction of shed to electric motor as false. RW1 further stated that no additional premium was paid to cover the risk of the Hamalies and there is no Indian Motor Tariff (IMT) Endorsement No.39 in Ex.B1 – Policy and hence this respondent is not liable to pay compensation for the death or injuries suffered by the Hamalies travelling on the offending tractor. The testimony of RW1 clearly reveals that no extra premium has been paid to cover the risk of

Hamalies who travelled in the tractor. It is also pertinent to note that there is no cross-examination on this aspect specifically. Therefore, the testimony of this witness clearly reveals that no extra premium has been paid under Ex.B.1– insurance policy to cover the risk of Hamalies travelling on the tractor for loading and unloading purpose.

12. In **Royal Sundaram Alliance Insurance Co. Ltd. v. A. Pappathi and others**[6], the scheme of Tariff Advice Committee has been explained in paras 19, 20 and 21. No doubt, this decision is rendered in respect of Section 6 of India Motor Tariff (IMT), which is relevant in the case of a private Car Package Policy, is not applicable directly to the facts of the present case. In the instant case, the vehicle involved in the accident is a tractor-trailer, which is a goods vehicle. There is no India Motor Tariff (IMT) Endorsement No.39 in Ex.B.1-Insurance Policy. As a matter of fact, the decision in **Royal Sundaram (6 supra)** is taken into consideration only for the limited purpose of explaining the applicability of provisions of the Tariff Advice Committee Rules made under the Insurance Act. In the instant case, there is no payment of extra premium to cover the risk of Hamalies working on the tractor-trailer. No doubt, Ex.B.1 is a Special Type of Policy 'B' Package Policy, but the testimony of RW1 reveals that no additional premium has been paid to cover the risk of Hamalies travelling on the tractor-trailer.

13. As per India Motor Tariff Rules, 2002, IMT Endorsement No.39, the legal liability to the persons employed in connection with the

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[6] ACC 2012 (2) 126 = 2011 ACJ 557

operation and/or maintaining and/or loading and/or unloading motor vehicle (for Goods Vehicle) Rules reads as under:

> *"In consideration of the payment of an additional premium of *.... it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer shall indemnify the insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this Endorsement, the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading/or unloading but in any case not exceeding seven in number including driver and cleaner) whilst engaged in the service of the insured in such occupation in connection with the .... And not exceeding seven in number and will in addition be responsible for all costs and expenses incurred with its written consent."*

14. Learned Standing Counsel for the Insurance Company, while placing reliance on IMT Endorsement No.39 referred above, contended that no extra premium was paid for coverage of the risk of Hamalies working on the tractor-trailer for loading and unloading purpose and, therefore, the insurance company has no liability to pay any compensation to them due to breach of conditions of Insurance Policy.

15. It is pertinent to note that the Tribunal has not considered this aspect of payment of additional premium, though the said contention was raised in the counter by the Insurance Company before the Tribunal. Therefore, without considering this aspect in proper perspective, the Tribunal went wrong in concluding that the insurance company is liable to pay compensation in this matter,.

16. Learned counsel for the respondents-claimants contended that if the Court comes to the conclusion that the deceased/injured travelled as gratuitous passengers, even then the risk of such passengers is covered vide the decision of the Supreme Court in **Manuara Khatun v. Rajesh Kr. Singh**[7]. It is further submitted that as the Insurance Company has also contended that the deceased/injured travelled as gratuitous passengers, the insurance company may be directed to pay compensation at the first instance and recover the same from the owner of the vehicle, as held in **Manuara Khatun (7 supra).**

17. On consideration of the facts and circumstances of the case, the decision rendered in **Manuara Khatun's case** (supra) is not applicable to the facts of the present case. There is evidence on record to show that the deceased and the injured though travelled as hamalies, no additional premium for coverage of their risk was paid by the owner. In fact, though the accident occurred in the year 2007 i.e., about 10 years back and though the Tribunal held that the owner and insurer are liable to pay compensation, the claimants could not get any relief all these years. On contest, in these appeals, it is proved that no additional premium has been paid for coverage of the risk of the persons travelling in the Tractor-Trailor. It is a fact that the claimants worked as hamalies on tractor-trailor for loading and unloading purpose and non-payment of additional premium by the owner would exonerate the liability of the insurer.

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[7] AIR 2017 SC 1204

18. **IN THE RESULT**, the Civil Miscellaneous Appeals are allowed setting aside the findings of the Tribunal in the impugned Award with regard to fixing liability against the 2nd respondent – insurance company. Rest of the Award shall remain unaltered. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

05th October, 2017

Msr / Ksm

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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