HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.Nos.711 of 2010 and 2013 of 2013

COMMON JUDGMENT:

The two appeals are arisen out of the respective two claims in O.P.Nos.84 and 377 of 2006. The respective injured maintained the claims against the owner and insurer of the tractor-trailor bearing No.AP 16AF 4258 and 4259. The claim is for compensation of Rs.2,00,000/- and Rs.1,50,000/- respectively for the injuries sustained while traveling in the trailor propelled to the tractor with load of cotton. The averments in the claim petition show that the claimants two in number for the respective two appeals along with other claimants of the accident dated 18.02.2005 early hours, while taking the cotton load being the farmers transporting that of them and travelling thereof from Kallur to Khammam market, due to the rash and negligent driving of the driver of the tractor-trailor from the lorry coming in opposite direction, the tractor driver took a turn observing RTC bus coming in opposite direction and because of his applying sudden brakes, the trailer is detached from the tractor and turned turtle and the claim petitioners and others fell down and sustained injuries.

2. The main contention of the 2nd respondent/insurer is while generally saying driver has no license, the vehicle is not road worthy and the injured claimants are unauthorized passengers in the goods vehicle and the other contention is that there is no coverage of risk and the insurance company is not liable. It is from the contest and from the evidence on record in both the claims, the tribunal held that there is coverage of risk in awarding compensation. It is impugning the same, the insurer maintained the two appeals.

3. The main contention raised in the appeals by the insurer, impugning the award of the tribunal in fixing joint liability is that, the vehicle in question from the very claim petition averments respectively, as can be seen from the policy meant for agricultural purpose; was in use for commercial purposes as taking the cotton to the market is not integral part of the agricultural purpose, for which the policy not covered and thereby the insurer cannot be made liable and the trial Court gravely erred in fixing joint liability, hence to allow the appeal by exonerating the insurer.

4. The learned counsel for the respective claimants in the two appeals submitted that the trial Court is right in awarding

compensation fixing joint liability holding that the vehicle is in use for agricultural purpose and for this Court while sitting in appeal, there is nothing to interfere, as the very claim is that they are farmers growing cotton and it is their produce they were taking in the tractor-trailor to the market and that does not mean, there is a change in use from agricultural to commercial purpose.

5. The learned counsel placed reliance on the expression of another Single Judge of this Court in MACMA No.1596 of 2008 dated 29.07.2011. A perusal of said judgment, no doubt discloses arising out of the same accident, no way discloses of any such contention raised as here in this case, therein but for general averments of driver has no license and even in use for agricultural purposes they are not supposed to travel and thereby unauthorized passengers and insurer cannot be made liable was the only contention. Once, it is the subsilentio that expression even between the insurance company and other claimants of same accident, not binding on this Court and it no way even operates as estoppel against the insurer to say taking the produce to market for sale for which the vehicle in use is not an agricultural but commercial purpose. Once the policy not covered the risk for commercial purpose, the question of fixing joint liability on the insurer does not arise

and thus the award of the tribunal in fixing joint liability is to be set aside. However, from the settled law that while filing the appeal by the insurer against the award of the tribunal by impugning, since deposited 50% of the compensation amount that was permitted to withdraw, to that extent, insurance company is not entitled to recover from the claimants but from the owner of the vehicle.

6. Accordingly, both the appeals are allowed to the above extent setting aside the awards of the tribunal in O.P.Nos.84 and 377 of 2006. No order as to costs.

7. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:06.01.2017
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