HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.582 OF 2010

JUDGMENT:

The appellant, no other than 2nd respondent—insurer out of 6 respondents including R.3 to R.6 (legal representatives of R.1—owner of the lorry bearing No.APG 6849 since died pending the lis) of the claim petition M.V.O.P. No.1149 of 2002 on the file of the learned Chairman, Motor Accidents Claims Tribunal–cum–V Additional District Judge, (FTC) Guntur (for short 'the Tribunal') filed under Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short 'the Act'), by the claimants no other than wife and three minor sons of the deceased Ramulu, aged about 30 years as per Ex.A3—post mortem report, doing business in sheep and goats and earning therefromRs.2,500/- p.m for his death in the motor accident alleged as caused by the lorry supra, for compensation of Rs.3,00,000/- against the owner and insurer supra, impugning the award of the Tribunal dated 30.10.2007 for fixing joint liability for the amount prayed for with interest at 7.5% per annum, preferred the appeal with the grounds in the appeal that the Tribunal failed to see that the deceased by name Ramulu was travelling in the lorry supra as an unauthorized passenger since said vehicle was a goods transport vehicle and loaded with iron rods at the time of accident, that the Tribunal failed to see that it is a clear case of violation of terms and conditions of the policy on the part of the owner inasmuch as the driver for allowing the deceased to travel as an unauthorized passenger and for that the owner alone liable, that the Tribunal failed to follow the observation in the expression in ***NICL vs Bommithi Subbayamma***[1] wherein it is categorically held that for gracious passenger in a goods vehicle, the insurer is exempted from liability but the owner, that the Tribunal failed to that the owner

[1] 2005 ACJ 721

allowed the driver though not competent for not having valid driving licence, hence to allow the appeal by exonerating the Insurer. The learned counsel for the appellant—insurer reiterated the same during the course of hearing.

2) It is the submission of the learned counsel for the respondents 6 to 9 (legal heirs of appeal R-5—owner of the lorry) as well as the learned counsel for the claimants—appeal respondents 1 to 4 that there is nothing to interfere with the findings of the Tribunal for this Court while sitting in appeal but for dismissal of the appeal.

3) Heard both sides and perused the material on record.

4) The factual matrix is that 06.09.2002 the deceased Ramulu along with his partner by name Pullamraju were travelling with sheep and goats in the lorry supra, when the lorry reached near Ramakrishnapuram on Guntur-Sattendapalli Road, due to the rash and negligent driving of the driver of the said lorry, the lorry dashed a tree and fell down, as a result said Ramulu died on the spot. The evidence of PW.2—so called eye witness travelled along with the deceased at the time of the accident is that the accident was occurred due to rash and negligent driving of the driver of the lorry and even Ex.A1—FIR and Ex.A5—charge sheet also reveals the same and Ex.A4—MVI report also discloses the acceded occurred was not due to any mechanical defects of the lorry.

5) The Tribunal from that held that though the appellant—insurer contended that the deceased travelled in the lorry as an unauthorized passenger, the evidence shows that he was travelling in the lorry by engaging as owner of sheep and goats. Further the contention of the Insurer that the driver was not possessing valid licence at the time of the accident and hence there is no liability is not

tenable because it is the settled law that the driver though not possessed valid driving licence or even no licence or fake licence or etc., he cannot escape from the liability but to pay and recover from the owner.

6) The evidence of RW.2—employee of the insurer in support of the suggestions in the cross examination of PW.1 is that the driver of the crime vehicle has no valid driving licence and the deceased was unauthorised passenger and thereby, the insurer is not liable, by supporting it in showing Ex.B1—policy, there is no coverage of risk for unauthorised passengers of the goods vehicle. The evidence shows at that time the lorry was loaded with iron rods and the deceased was boarded as a midway passenger with four others along with their sheep, thereby once lorry was already loaded, they cannot claim as owners of goods vehicle for not empty vehicle they engaged as there was already existing load. Ex.B4 shows the driver, who got LMV transport licence since 1991, got heavy goods transport licence only in 2003, thereby he got imperfect driving licence is the contention of the insurer. Leave about that no way exonerated the insurer as held by the Tribunal but for to pay and recover, if any. So far as the deceased unauthorised passenger is concerned, therefrom the policy not covered the risk of the transport vehicle to take the deceased and cannot claim as owner of goods even boarded with sheep for already it is a vehicle with iron load and the evidence of RWs.1 to 4 establish the same. The Tribunal ought not to have awarded compensation against the insurer for the policy not covered the risk of passengers in a goods vehicle, thereby the award of the Tribunal fixing joint liability on the insurer *per se* unsustainable, as held in Bommithi Subbayamma (supra) apart from the expressions of the Apex Court in ***National Insurance Company Limited vs Saju***

***P.Paul*[2], *Sanjeev Kumar Samrat vs NIC*[3]**. However, this Court already permitted to withdraw half of the deposited amount, that is deposited by the insurer while filing the appeal. What is the amount deposited and permitted thereby, the insurer cannot recover from the claimants but for from the owner. For rest of the compensation, the claimants can recover from the owner.

7) Accordingly and in the result, the appeal is allowed by setting aside the award of the Tribunal fixing liability on the owner by exonerating the insurer. However, whatever the amount paid, the insurer cannot recover from the claimants but for from the owner and for rest of the amount, the claimants are entitled to recover from the 1st respondent-owner of the vehicle. No order as to costs.

8) Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.20.01.2017
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[2] 2013 ACJ 554
[3] 2014 (14) SCC 243