

faSMT JUSTICE T. RAJANI

MACMA.Nos.2423, 2468, 2469, 2422, 2474,
2485, 2484, 2443 and 2442 of 2006

COMMON JUDGMENT:

These appeals are preferred by the appellant-insurance company, who is respondent No.2 before the Court below, assailing the judgment passed by the IV the additional district judge in OP No. 267/2002 and similar but separate judgments of the IV Additional District Judge (Fast Track Court), Ongole in OP.Nos.251, 255, 259, 261, 269, 265, 257 and 253 of 2002 dated 29.04.2002 arising out of the same accident.

2. The appellant-insurance company impugnes the judgments as regards the propriety of the judgment in fixing the liability on the appellant as regards the compensation awarded to the claimants, in all the cases, who are more than six in number, while there is no liability on this appellant as per the terms of the insurance policy.

3. The grounds raised in the appeals are that the Court below failed to see that the deceased were unauthorized passengers in a goods vehicle, being a tractor and trailer, wherein only the driver is permitted to travel; the Court below failed to see that there is no coverage for the deceased under the Act policy; the Court below failed to see that the driver was not holding driving licence to drive the vehicle and there is no permit or fitness certificate to cover the passengers.

4. Heard both the counsel.

5. Since the points to be decided in all the appeals are the same and since there is a nexus between the cases which necessitates a common judgment it is felt convenient and useful that a common judgement be passed.

6. Counsel for the appellant, however, presses his challenge on two grounds in the appeal viz. (1) the liability of the insurance company in terms of the insurance policy, Ex.B3. (2) the liability of the insurance company in spite of the crime vehicle being driven by an unauthorized person.

7. The facts, to the extent necessary, are, that the deceased or the injured, as the case may be, in all the OPs, were travelling in the tractor belonging to the first respondent, as coolies, on 02.04.2002. Their case is that the first respondent engaged them for coolie work and one S. Agustin is their mastry. While the tractor was proceeding to its destination, one J. Srinivasulu, regular driver of tractor, suddenly fell sick due to stomach pain and left the tractor on the street and went to get medicine and as he did not return for long time, one Nosina Srinu, drove the tractor and caused the accident.

8. The Court below made an elaborate discussion on the aspect of liability and by considering the contents of Ex.B1, which is said to be the cover note, wherein it was mentioned that the insurance is for public purpose, fixed the liability on the appellant-insurance company. It is the propriety of such liability, fixed on the appellant-insurance company, which is called in question in these appeals.

9. The two aforementioned grounds, on which the appellant's counsel presses, can be taken to be the points that have to be decided in this appeal. No repetition need be made.

As regards the first point, a look at the cover note of the insurance policy, in the first instance, would be beneficial, as the reliance placed by the court below is on its contents, though, in fact, it is the terms of the policy based on which liability of the insurance company has to be decided. The cover note, as already observed, marked as Ex.B1, shows that the words 'public purpose' were written in hand, in a column where the specifications with regard to the driving licence were made. The insurance policy, which is marked as Ex.B3, however does not specify that it is for public purpose. The terms of the policy does not cover use for carrying passengers in the vehicle except employees (other than driver) not exceeding six in number coming under the purview of the Workmen's Compensation Act, 1923. The other condition nevertheless being that the driver should hold effective driving licence at the time of the accident.

10. Counsel for the appellant contends that since there is no liability of the insurance company, under the policy, as no premium is paid for the coolies, no liability can be fixed on the appellant and even if the Court comes to a conclusion that their risk is covered, as none of the victims were employed by the first respondent, they cannot claim any compensation under this policy as, as per the terms of the policy they should be employees of the owner.

11. The aforesaid contention has to be noted only to be rejected in the light of the evidence of the owner of the vehicle, examined as

R.W.1. In his chief examination, speaking about his avocation, which necessitated engaging the victims as coolies, he stated that he owned six acres of land in Kotikalapudi village apart from taking on lease, six acres of land in the same village; he raised paddy in the said land; he used to engage coolies from Venkatapuram and neighbouring villages; there is no bus facility between those villages; he came to know about the accident caused by his driver Jakkula Srinivasarao and when he questioned his driver, he informed that one of the labourers drover the tractor when he went to purchase medicines. The cross-examination of R.W.1 elicits that coolies were going to Kotikalapudi for harvesting the crop and about 20 coolies were travelling in the tractor trailer and not 40 as suggested; the coolies were boarded by his driver Jakkula Srinivasarao in his presence; since four days prior to the accident coolies were going in the tractor to the fields from Venkatapuram and vice versa. Though it was elicited that he did not file any documents to show that he owns lands in Kotikalapudi, there is absolutely no doubt cast on the credibility of R.W.1, to disbelieve his evidence, which is corroborated by the evidence of the claimants and a traveller who was in the tractor on the date of the accident. The other witnesses examined on behalf of the respondents are the tractor driver, R.W.2 and R.W.3, who was travelling at the time of the accident and the officials of the insurance company as R.Ws.4 to 7. R.Ws.2 and 3 also supported the version of R.W.1 with regard to engaging the victims as labourers and they being carried on the vehicle for the purpose of agricultural operations. Hence, the above evidence would lead to a clear conclusion that the victims were engaged by R.W.1 for working in his fields, thereby,

satisfying the condition of the policy that they should be engaged by the owner of the vehicle. So, the relationship between the owner and the victims is that of employer and employee, as is the requirement under Workmen's Compensation Act, which is spelled in the policy terms.

12. With regard to the second aspect in the first point, i.e. the coverage and the extent of coverage of the policy, the Court below though noted that the policy is for public purpose, went wrong in referring to the document in which the said words were mentioned, by noting the cover note as the policy. The wrong noting of the number of the document may not otherwise be material. But when the court is relying on the contents of the document, the reference to the document needs to be appropriate. The words derive their meaning depending on the nature of the document in which they are mentioned. In fact, as already observed, the words 'public purpose' were mentioned in the cover note. The cover note undisputedly is taken prior to the issuance of the policy. Only the broad purpose for which the policy is being taken has to be assumed as being mentioned in the cover note, whereas the exact purpose for which the policy was taken and the extent of coverage would be specifically mentioned in the policy. The words public purpose mentioned therein have to be understood as carrying meaning against the words private purpose, which may carry a narrow meaning. The words "Public purpose" mentioned in the cover note can be interpreted to mean "not private purpose". But the policy terms can restrict the scope of Public purpose by mentioning specifically the (public) purposes for which the coverage

is provided. Hence, the terms of the insurance policy would become a guiding factor for deciding the liability of the insurance company and it can be thereby concluded that the coverage of the insurance policy in this case is for six passengers in the tractor trailer for agricultural purpose. It can also be said here, that the permit, taken for a commercial vehicle, cannot be a testing document for liability. It is the terms of the policy that form a basis for liability of the insurer. If there had been no policy taken at all, it could not have been urged that since the permit is for a certain category of vehicle, insurer would be liable. It is the existence of a policy and the terms of the policy that are material for deciding the liability. The evidence of RW7, as rightly got recorded, is in the form of an opinion and need not be taken as a basis for understanding the terms of the policy.

13. Counsel for the appellant relies on a decision of the Supreme Court in *UNITED INDIA INSURANCE CO. LTD. v. SERJERAO* (Civil Appeal No.5201 of 2007 and batch dated 14.11.2007) in support of his contention that the risk of gratuitous passengers is not covered by the policy and insurance company is not liable. The Supreme Court, in turn, referred to a decision in *ORIENTAL INSURANCE COMPANY LTD. v. BRIJ MOHAN* (2007 (7) SCALE 753) and held that labourers travelling in trollies are not covered by the insurance policy therein, as the policy do not provide for the risk of such persons travelling in the trollies. But in *BRIJ MOHAN's* case the Supreme Court was dealing with a case where the use of the tractor trailer was not for agricultural purpose but was for business purpose. Hence no support forth comes to the insurer, from the above decision.

The other decision in *SMT. YALLWWA v. NATIONAL INSURANCE CO. LTD*¹ relied upon by the counsel for the appellant on the aspect of maintainability of the appeal by the insurance company, need not be looked into as there is no quarrel on the said contention.

14. Counsel for the respondents placed reliance, but in vain, on the decision of the Supreme Court in *NATIONAL INSURANCE CO. LTD. v. BALJIT KAUR*² to contend that the Supreme Court directed the insurance company, in that case, to pay the compensation amount and recover the same from the owner. But the Supreme Court, in that case, considering that the law was not clear since the decisions rendered in *NEW INDIAN ASSURANCE CO. v. SATPAL SINGH* [(2000) 1 SCC 237] and *NEW INDIAN ASSURANCE CO. LTD. v. ASHA RANI* [(2003) 2 SCC 223], made such a direction and it was clearly held that the said legal position has only prospective effect. Hence, the same cannot be taken help of by the counsel for the respondents to contend that the insurance company has to be mulcted with liability with regard to all the persons travelling in the vehicle involved in the accident.

15. The two terms, 'commercial vehicle' and 'public purpose' from which an implication that the passengers in the tractor trailer were covered, was drawn by the Court below, do not find any definition in the Motor Vehicles Act. If a liability other than a liability provided for under the Act is to be enhanced under the insurance policy, additional premium has to be paid. In this case the policy shows that basic

¹ AIR 2007 SC 2582

² (2004) 2 SCC 1

premium was paid for public risk. The policy is an Act policy requiring coverage for six employees carried in the vehicle for agricultural purpose. If additional premium is not paid covering the risk of employees over and above six, the liability can be fixed only for those six persons. Hence, in this case since no additional premium is paid, but basic premium is paid, coverage of the policy extends only for six employees. Whatever be the words employed, a policy would cover the risk of only those persons who fall under the categories specified in its terms. Even if it is for public risk, those of the public, who meet the criteria within the terms of the policy, will be entitled for a claim.

16. As regards the second point, whether the vehicle being driven by an unauthorised driver would exonerate the insurer from its liability, in *SKANDIA INSURANCE CO. LTD VS KOKILABEN CHANDRAVADAN & ORS*³ the Supreme Court observed as follows:

“Section 96(2)(b)(ii) extends immunity to the insurance company if a breach is committed of the condition excluding driving by a named person or persons or by any person who is not fully licensed, or by any person who has been disqualified by holding or obtaining a driving licence during the period of his disqualification. The expression 'breach' is of great significance. The dictionary meaning of 'breach' is 'infringement or violation of a promise or obligation'. [See Collin's English Dictionary], It is, therefore, abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is not duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression 'breach' carries within itself induces an inference that the violation or infringement on the part of the promisor must be a wilful infringement or violation. If the insured is not at all at

³ AIR 1987 SC 1184

fault and has not done anything, he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is 'guilty' of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the insurance company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise. Not when some mishap occurs by some mischance. When the insured has done everything within his power inasmuch as he has engaged a licensed driver and has placed the vehicle in charge of a licensed driver, with the express or implied mandate to drive himself, it cannot be said that the insured is guilty of any breach. And it is only in case of a breach or a violation of the promise on the part of the insured that the insurer can hide under the umbrella of the exclusion clause. “

The evidence of the owner shows that he gave specific instructions to his driver, not to allow any one else to drive the vehicle. Thereby he stands satisfying the responsibility that is placed on him by the above decision and becomes entitled for indemnity from the insurer.

17. Having concluded that policy provides coverage for six employees, it has to be now decided as to who out of the 20 employees can be taken as those six employees and as to how justice should be balanced, when all the victims stand on the same plane, leaving no scope for any distinction that can be made. In that regard, the counsel for the appellant helps this Court by furnishing a decision

of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. ANJANA SHYAM⁴ wherein the Supreme Court laid down a formula for distribution of compensation among all the passengers, who were travelling in the vehicle, when coverage under the policy is only for certain number of persons. It was held that the highest of the awards made in respect of the victims has to be taken into consideration and distribution should be proportionately done among all the claimants. The same principle can be adopted in this case.

In the result, the civil miscellaneous appeals are allowed in part. The Court below is directed to take into consideration the highest of the 6 awards and distribute the same proportionately among all the victims in all the above OP's following the decision of the Supreme Court in ANJANA SHYAM's case (3 supra). As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

August 11, 2017
DSK

T. RAJANI, J

⁴ AIR 2007 SC 2870