THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 1465 of 2009

JUDGMENT:

This appeal arises out of the order dated 17.04.2008 in M.V.O.P.No.675 of 2004 on the file of Motor Accident Claims Tribunal-cum-II Additional District Court (Fast Track Court), Srikakulam. The appellants are the petitioners-claimants before the Tribunal. The 1st appellant is the wife, and the 2nd appellant is the father of the deceased. The claimants filed the claim petitin under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.3,00,000/-, on account of the death of the deceased Bandapu Bodeyya @ Bodenna, in a motor vehicle accident that occurred on 28.01.2003.

On the fateful day, while the deceased, who was working as labourer on tractor-trailer bearing No.AP-30-T-4741 and APP 5593, went on the tractor-trailer to Gahthalavalasa village to unload the husk and after unloading the same, he returned to Pedda Tamarapalli village and when the tractor reached near Amberpet, the 1st respondent-driver had driven it in a rash and negligent manner on account of which the iron pipes arranged to the trailer touched the electrical wires, and due to electrocution of the trailer tractor, the deceased who sat by the side of the driver got electrocuted and died on the spot.

The 1st respondent-driver and the 2nd respondent-owner of the crime tractor-trailer remained exparte. The 3rd respondent-insurer filed counter affidavit denying the liability and quantum of compensation claimed by the petitioners.

The Tribunal, on consideration of the evidence of witnesses PWs.1 and 2, and documents Exs.A1 to A4 on behalf of the petitioners; and the evidence of witnesses RWs.1 and 2, and the documents Exs.B1 and B2, has awarded compensation of Rs.2,64,300/- with proportionate costs and interest at 7.5% per annum, against respondent Nos.1 and 2, and exonerating the liability of respondent No.3-insurer. Aggrieved by the impugned award, the claimants are before this Court challenging the exoneration of liability of 3rd respondent-insurance company.

Heard the arguments of Sri Aravalla Rama Rao, learned counsel for the appellants-claimants; and Sri K. Seetha Ram, learned Standing Counsel for respondent-National Insurance Company.

Learned counsel for the appellants submitted that the deceased was a hamali working on the tractor trailer and he died in the accident due to electrocution. He further submits that the Tribunal held that the accident occurred due to the rash and negligent driving by the driver of the tractor-trailer, and awarded compensation against respondents 1 and 2, the driver and owner of the crime vehicle, but exonerated the liability of the insurance company on the ground that the deceased was an unauthorized passenger. He further submitted that even if the deceased was considered by the Tribunal as unauthorized passenger, the liability of the insurance company cannot be exonerated; as such the insurance company may be directed to pay the compensation at the first instance, and recover the same from the owner of the crime vehicle.

Learned counsel for the appellants placed reliance on the decision reported in **United India Insurance Co. Ltd. v. Godabai Kisanrao Shinde**[1], and submitted that since the Tribunal held that the deceased travelled as gratuitous passenger, the insurance company may be ordered to pay and recover the compensation amount from the owner.

Learned counsel for the respondent-insurance company mainly contended that the insurance company has no liability to pay any compensation to the claimants as there is no coverage under the insurance policy covering the risk of the deceased, as the owner of the vehicle has not paid any premium for covering the risk of coolie travelling in the tractor-trailer bearing No.AP-30-T-4741 and APP 5593. It is also argued that there is violation of policy conditions as the policy is covered for agricultural purposes only whereas the vehicle was used for non-agricultural purposes. On these grounds, the learned counsel for the insurance company has sought for dismissal of the appeal.

Learned counsel for the insurance company submits that in the light of the decisions reported in **United India Insurance Co. Ltd. v. Serjerao and Ors.**[2], and **New India Assurance Co. Ltd. v. Sudesh Kumari and others**[3], in case of labourers travelling in trolley which is not having valid insurance to cover risk of labourers, the insurance company would not be held liable. Learned counsel placed reliance

[1] LAWS (BOM) 2017 11 88
[2] 2007 AIR SCW 7280
[3] 2007 ACJ 661

on para 8 of the judgment in **Serjerao** (2 supra) which reads as under:

> *"So far as the question of liability regarding labourers travelling in trollies is concerned, the matter was considered by this Court in Oriental Insurance Company Ltd. v. Brij Mohan and Ors. (2007 (7) SCALE 753) and it was held that the Insurance Company has no liability. In view of the aforesaid two decisions of this Court, we set aside the impugned order in each case and remit the matters to the High Court to consider the matters afresh in the light of what has been stated by this Court in Smt. Yallawas case (supra) and Brij Mohans case (supra)"*

The other decision relied on in **Sudesh Kumari** (3 supra) is to the effect that as per Section 147 of the Motor Vehicles Act, 1988, the policy covers the risk of the driver. It was held in paragraph 10 of **Sudesh Kumari** as under:

> *"In the present case, admittedly, the vehicle in question was a tractor and the insurance policy has been proved on record as Exh. RC. As per the insurance policy, the risk cover is only for the driver and not the passenger and there is no liability on the insurance company with regard to payment of compensation to any passenger sitting on the said tractor. Therefore, the insurance company cannot be held liable."*

Learned counsel for the respondent-insurance company, placing reliance on the above two decisions submits that the insurance company is not liable to pay any compensation to th claimants as there is no coverage of insurance policy for the deceased who travelled in the trailer.

Learned counsel for the insurance company argued that the deceased travelled as Hamali in the trailer, and as the owner of the tractor-trailer has not paid insurance for coverage of risk of the deceased, the owner is only liable to pay the compensation and the insurance company is not liable.

In the light of the judgment of High Court of Bombay (at Aurangabad) in **Godabai Kisanrao Shinde (1 supra)**, several decisions of the Hon'ble Supreme Court have been referred, including recent decision rendered by the Hon'ble Supreme Court in **Saju P. Paul**[4] and **Manuara Khatun**[5], wherein the insurance company was directed to satisfy the Award first by paying the compensation to the claimant at the first instance, and then recover it from the respondent-owner.

In **Godabai Shinde (1 supra)**, the Bombay High Court has observed that pay and recovery can be ordered in case of persons travelled as gratuitous passengers in tractor-trailer.

Learned counsel for the insurance company submits that as referred in the Bombay High Court judgment, which is a case of truck, pay and recovery was ordered, whereas in the instant case, the deceased travelled in a trailer and, therefore, the deceased can be considered as unauthorized passenger.

On consideration of the arguments of the learned counsel for the appellant, and respondent, this Court is of the considered view that when there is no coverage for a coolie/hamali travelling in a tractor-trailer, the status of

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[4] LAWS (SC) 2013 1 11
[5] (2017) 4 SCC 796

the person who traveled has to be considered as an unauthorized passenger.

The deceased in the instant case, admittedly, traveled as a coolie working on the tractor. Admittedly, there is no coverage of insurance for covering the risk of the deceased. Therefore, it has to be considered that the deceased traveled as unauthorized passenger. As far as unauthorized passenger or gratuitous passenger is concerned, the Hon'ble Supreme Court in **Saju P. Paul (4 supra)**, held that the liability of insurance cannot be exonerated but the insurance company may be directed to pay the compensation at the first instance and recover the same from the owner.

In the recent decision rendered by the Hon'ble Supreme Court in Shivawwa and another v. Branch Manager, **National India Insurance Co. Ltd. and another**[6], the Hon'ble Supreme Court dealt with a case of the deceased travelling in a tractor-trailer, and in paragraph 11, the procedure for recovery of amount paid under the contract of insurance on behalf of the insured is stated.

It is pertinent to note that the deceased is a third party to the insurance policy. No doubt, he traveled as hamali working on the tractor, but his risk was not covered as the owner has not paid additional premium for coolie. Since the Motor Vehicles Act is a beneficial legislation and in the light of catena of decisions referred above, the insurer can be directed to pay the amount at the first instance and recover the same from the owner of the vehicle.

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[6] AIR 2018 Supreme Court 1640

Learned counsel for the insurance company submitted that the driver of the crime vehicle was not possessing valid driving licence at the time of accident and that it is in violation of terms and conditions of insurance policy. This aspect was not dealt by the Tribunal, as due to non-examination of any witness nor filing any documents with regard to driving licence violation by the insurance company.

It is contended that the insurance policy was made for coverage of risk in the case of agricultural use of the vehicle, whereas the vehicle was used for non-agricultural purposes, and, therefore, there is no coverage of risk of the persons travelling in the tractor-trailer.

In fact, the findings of the Tribunal reveal that the tractor and trailer was going empty, while the deceased was traveling in it. Therefore, the question of the use of the vehicle for non-agricultural purposes does not arise. Moreover, there is no satisfactory evidence produced in this regard by the insurance company.

It is pertinent to note that Ex.B1 is a comprehensive insurance policy which covers the risk of the persons travelling in the vehicle. The facts of the case reveals that the deceased is a third party travelling in the vehicle. Third party means that he is neither insured nor the insurer. Though it is contended that the insurance policy is made for non-agricultural purposes, it is a package policy. A perusal of Ex.B1 policy does not disclose that it is made for agricultural purposes. However, in the peculiar facts and circumstances of the case, and in the light of the judgment of the Hon'ble Supreme Court in **Saju P. Paul (4 supra)** this is a fit case where the insurance company can be directed to pay the compensation at the first instance and recover the same from the owner of the crime vehicle.

IN THE RESULT, the appeal is partly allowed, directing the insurance company to pay the compensation to the appellants-claimants, at the first instance, within one month from the date of receipt of a copy of this order; and recover the same from respondent No.2-owner of crime vehicle, as per the procedure contemplated in **Oriental Insurance Company Ltd. v. Nanjappan**[7]. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

11th July, 2018
KSM

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[7] (2004) 13 SCC 224

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