THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 1094 of 2009

JUDGMENT:

This appeal arises out of the order dated 29.09.2008 passed in O.P.No.284 of 2007 by the Chairman, Motor Accident Claims Tribunal (District Judge), Anantapur. The appellant is New India Assurance Company Ltd., and the 1st respondent is the claimant before the Tribunal. The claimant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.4,00,000/-, on account of the death of her husband Chakali Chandra Mohan in a motor vehicle accident that occurred on 11.03.2007.

The case of the appellant is that the deceased was engaged as Hamali by the 1st respondent-owner of the vehicle for loading and unloading of basement stones in the tractor and trailer bearing No.AP-02-U-9173 and 9174. On 11.03.2007 at about 3:30 PM, the deceased and other Hamalies loaded stones in the tractor trailer bearing No.AP-02-U-9173 and 9174, Muthyalampalli Stone quarry and were going in the said vehicle to Topudurthi village for unloading the same. The tractor trailer were going on the road Baddalapuram – Tagarakunta village, and the driver of the said vehicle had driven it in a rash and negligent manner in high speed and lost control over the vehicle and dashed the culvert, resulting in the deceased falling down from the tractor and receiving multiple injuries. The husband of the petitioner died on the way to Government Hospital. Therefore, the claim petitioner claimed compensation of Rs.4,00,000/- against the insurer and owner of the crime vehicle. The Tribunal, on consideration of the evidence of PWs.1 and 2, the documents Exs.A1 to A7; and the evidence of RW.1 and Exs.B1 to B4, has partly allowed the claim petition by awarding compensation of Rs.1,76,000/-, with interest at 6% per annum, against respondents 1 and 2, holding them jointly and severally liable to pay the compensation. Aggrieved by the order passed by the Tribunal, the insurance company has filed this appeal.

Heard the arguments of Sri P. Bhanu Prakash, learned counsel for the appellant-insurance company, and Sri P. Narasimhulu, learned counsel for respondent No.1-claimant. None appeared on behalf of respondent No.2-owner of the crime vehicle, though notice has been served and counsel is engaged.

Learned counsel for the appellant-insurance company mainly contended that the insurance company has no liability to pay any compensation to respondent No.1 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 insurance premium for covering the risk of coolie travelling in trailer bearing No.AP-02-U-9174. It is also argued that the deceased travelled in the tractor-trailer as unauthorized passenger sitting on heap of stones and slipped due to jerks occurred during the journey. 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. It is also argued that the driver of the crime vehicle was not having effective and valid driving licence at the time of the accident, and it is in violation of Rule 3 of CMV Rules, 1989. On these grounds, the learned counsel for the appellant has sought for allowing the appeal by exonerating its liability for payment of compensation.

Learned counsel for the respondent No.1 submits that the deceased travelled in the tractor-trailer as a coolie working on the tractor. Reliance was placed 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 appellant 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

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

insurance company would not be held liable. Learned counsel placed reliance 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 appellant, placing reliance on the above two decisions submits that the insurance company is not liable to pay any compensation to respondent No.1 as there is no coverage of insurance policy for the deceased who travelled in the trailer.

On consideration of the decisions referred by both the counsel, this Court is of the considered view that the deceased travelled in the trailer. According to respondent No.1, the deceased travelled as Hamali working on the tractor.

Learned counsel for the appellant argued that the deceased travelled as Hamali in the trailer but there is no coverage of insurance for his risk.

In the light of the above two decisions referred by the counsel for the appellant, there must be coverage of insurance for the Hamali / Coolie travelling on the tractor.

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 claimants, and then recover it from the respondent-owner of the crime vehicle.

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.

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

Learned counsel for the appellant 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 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, but there is no coverage of insurance covering his risk. 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 insured.

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 an unauthorized passenger as there was no coverage for his risk though he traveled as hamali working on the tractor. 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.

Learned counsel for the appellant submitted that the driver of the crime vehicle was not possessing valid driving licence at the time of accident and that it is violation of terms and conditions of insurance policy.

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

It is pertinent to note that Ex.B1 is a comprehensive insurance policy which covers the risk of the persons travelling in the vehicle.

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[6] AIR 2018 Supreme Court 1640

Admittedly, the deceased is a third party travelling in the vehicle. 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 facts and circumstances of the case, and in view 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 to the claimants, 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 respondent No.1-claimant, 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

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[7] (2004) 13 SCC 224

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