THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 1903 of 2009

JUDGMENT:

This appeal is arising out of the order dated 14.10.2008 passed in O.P.No.123 of 2007 by the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, FTC, Anantapur.

2. The appellant is the United India Insurance Company, the 2nd respondent in the O.P. filed before the Tribunal. The respondents-claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.3,00,000/- against the respondents 1 and 2, the owner and insurer of Swaraj Mazda Van bearing No.AP-03U-5609, on account of the death of K. Nagaraju in a motor vehicle accident occurred on 28.09.2006.

3. On 28.09.2006, the deceased and three others were engaged as coolies in the 1st respondent's vehicle i.e., Swaraj Mazda Van bearing No.AP-03U-5609. They loaded Papaya fruits from the garden land of Chidananda and later went to the garden land of Govindappa of Marimekulapalli village and while they were going to Rudrampalli village to load Papaya fruits and when the vehicle reached the land of Vadde Subbanna, at about 4:00 PM, the driver of the vehicle had driven it in a rash and negligent manner, due to which the vehicle turned turtle on the road side. Due to the impact, the deceased was stuck under the vehicle and was taken out from the vehicle and shifted to Government Hospital, Kalyandurg wherein the Doctor declared him dead. On information, the Kambadur P.S. registered a case against the driver of the crime vehicle in Crime No.86 of 2006 for the offence punishable under Section 304-A IPC.

4. The 1st petitioner is the wife, 2nd and 3rd petitioners are children, and the 4th petitioner is the mother of the deceased K. Nagaraju. They filed the claim petition O.P.No.123 of 2007 under Section 166 of the Motor Vehicle Act, before the Tribunal, claiming compensation of Rs.3,00,000/- against the respondents 1 and 2.

5. The 1st respondent-owner of the crime vehicle remained ex parte. The 2nd respondent-insurance company filed counter denying the allegations made in the petition, and contended that the deceased was travelling in the crime vehicle as an un-authorised passenger and his risk is not covered under the insurance policy of the vehicle. It is also contended that the claim is highly excessive.

6. The Tribunal, on consideration of the evidence of witnesses PWs.1 and 2, and the documents Exs.A1 to A4 marked on behalf of the petitioners; and the evidence of RW.1, and the documents Exs.B1 to B7 marked on behalf of the 2nd respondent-insurance company, held that the accident occurred due to the rash and negligence of the driver of the crime vehicle and awarded compensation of Rs.2,61,500/- with proportionate costs and interest at 7.5% per annum from the date of petition till realization, holding respondents 1 and 2 jointly and severally liable to pay the compensation.

7. Aggrieved by the order passed by the Tribunal, the 2nd respondent-insurance company has preferred this appeal.

8. Heard the arguments of the learned counsel for the appellant-insurance company, and the arguments of the learned counsel for respondents-claimants.

9. The point for consideration in this matter is whether there is coverage of risk of the deceased under the insurance policy Ex.B1?

10. Learned counsel for the appellant submits that the insurance company is not liable to pay compensation as there is violation of terms and conditions of the insurance policy as the deceased travelled in the crime vehicle as an un-authorised passenger and there is no coverage of risk for the deceased under the insurance policy Ex.B1.

11. On the other hand, the learned counsel for the respondents submits that the insurance company is liable to pay compensation as the insurance policy Ex.B1 contains recital to the effect that coverage of risk of persons who are loading and unloading including the driver and cleaner of vehicle. It is further submitted that the Tribunal has given a clear finding in paragraphs 16 and 17 of the judgment in respect of the liability of the insurance company, basing on the IMT 30 Rules and the coverage of insurance policy Ex.B1 for the risk of the seven coolies working including the driver and cleaner.

12. On consideration of the arguments of the learned counsel for the appellant, and the respondents, it is appropriate to refer to the findings of the Tribunal in paragraphs 16 and 17 of its judgment, which read as under:

> **"16……….. In consideration of the payment of an additional premium as stated in the schedule it is hereby understood and agreed this notwithstanding anything contained herein to the contrary the insurer shall indemnify the insured against his legal liability under the Workmen's Compensation Act, 1923, and subsequent amendments of that Act prior to the date of this Endorsements, the Fatal Accidents Act, 1855, or at Common Law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in**

> **loading/or unloading but in any case not exceeding seven in number including driver and cleaner) while engaged in service of the insured in such occupation in connection therewith and not exceeding seven in number and will in addition be responsible for all costs and expenses incurred with its written consent………."**
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> **17. On perusal of the above conditions it is clear that in loading or unloading 7 persons are permitted to travel in the crime vehicle including driver and cleaner. Therefore the policy covers the risk of the coolies. Hence the decision relied by the learned Counsel for R2 is not applicable to the facts and figures of this case and those cases facts are different. Hence the contention of the learned Counsel for R2 is hereby rejected."**

13. A perusal of findings in paragraphs 16 and 17 of the order passed by the Tribunal would clearly show that as per the contents of Ex.B1, which is the insurance policy, there is coverage of risk for the coolies not exceeding seven in number working on the tractor including driver and cleaner, for loading and unloading. As per the norms in IMT 39, there is legal liability on the persons employed in connection with the operation and / or maintain and / or loading and / or unloading of Motor Vehicles.

14. In view of the foregoing reasons, the order passed by the Tribunal holding the insurance company liable to pay compensation does not require any interference.

15. **IN THE RESULT**, the appeal is dismissed, confirming the order dated 14.10.2008 passed by the Tribunal in O.P.No.123 of 2007. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

20th September, 2018

JR / Ksm

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