THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.4255 of 2004

JUDGMENT:

This appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short) by the 2nd respondent/insurance company is directed against the order/award, dated 22.07.2004, in OP.No.393 of 2001 passed by the learned Chairman, Motor Accidents Claims Tribunal-cum- District Judge, Nellore.

2. I have heard the submissions of Sri Kota Subba Rao, learned counsel for the appellant/insurance company ('the insurance company', for brevity). The claimants/respondents 1 to 4 herein [hereinafter 'the claimants, for brevity] and the owner of the vehicle/the 5th respondent herein having been served with notices and having not entered appearance remained *ex parte*.

3. At the outset, it is to be noted that the claimants filed the claim petition before the Tribunal claiming a compensation of Rs.1,50,000/- due to the untimely death of Kadaveti Nagaraju [hereinafter 'deceased'] due to his involvement in the subject motor vehicle accident which occurred on 03.02.2001 at 11:30 PM when the bus in which he was travelling as a cleaner and insured with the appellant-insurance company dashed against telephone cable wires on account of the driver losing control over the bus due to his rash and negligent driving. On merits and by the order impugned in this appeal, the Tribunal awarded a compensation of Rs.1,50,000/- with interest @ 9% per annum from the date of petition till date of realisation recoverable jointly and severally from the owner of the vehicle/5th respondent herein and the appellant-insurance company. Aggrieved thereof and questioning its liability to

pay the compensation awarded to the claimants, the insurance company preferred this appeal.

4. Learned standing counsel appearing for the insurance company contended as follows: 'The deceased was a cleaner of the bus in which he travelled at the time of accident. The risk of the deceased/cleaner is not covered by the insurance policy in respect of the said bus or the provisions of the Act. The Tribunal failed to see that there is no liability under the Act or under the Policy under exhibit B1. The Tribunal failed to see that no premium is paid to cover the risk of the cleaner of the bus and that in the absence of payment of premium no liability can be fastened against the insurance company to pay the compensation awarded to the claimants, who are the legal heirs of the deceased cleaner. The Tribunal erred in treating the cleaner as a passenger. The deceased was on duty on the bus as a cleaner. When the risk of the cleaner is not covered, he cannot be treated as a passenger; and, since he admittedly travelled as a cleaner on the bus, on the footing that he is a passenger, no liability can be fastened on the insurance company contrary to law and the terms & conditions of the insurance policy. Hence, the impugned award fastening liability on the insurance company to pay the compensation awarded to the claimants is liable to be set aside.'

5. In the light of the facts and contentions, the points that arise for determination are –

Whether the risk of the deceased, who travelled in the bus involved in the accident as a cleaner, is not covered either under the policy of insurance, exhibit B1, or the provisions of the Act? And, if so, whether the award fastening liability on the insurance company to pay the compensation awarded to the claimants is liable to be set aside? To what relief?

6. **POINTS:**

At the outset, it is to be noted that it is specifically pleaded in the claim petition that the deceased, aged 19 years, is a town bus cleaner and that, on 03.02.2001, he proceeded in the bus as a cleaner and that while the bus was proceeding from Golagamudu to Nellore, the driver drove the bus in a highly rash and negligent manner and lost control over the bus and dashed the telephone cable wires and that the deceased who was standing on the door step of the bus fell on the road and that later he succumbed to the injuries sustained in the accident while being taken to a hospital. Hence, the fact that the deceased travelled as a cleaner in the bus that was involved in the accident is not in dispute.

6.1 Now the question is as to whether his risk is covered under exhibit B1, the policy of insurance, or the provisions of the Act. Learned counsel for the insurance company contended that the question involved is no longer *res integra* in view of the admitted facts and the decision of the Supreme Court in **Ramashray Singh v. New India Assurance Co.Ltd., and others**[1]. Firstly, as noted, the deceased travelled as a cleaner in the bus is not in dispute. Secondly, exhibit B1, the copy of the policy schedule in respect of the bus involved in the accident on a perusal would show that apart from (A) 'own damage' basic premium, the following premia for the following liabilities are collected: "(B) liability to public; Add: legal liability to passenger(s); legal liability to paid driver as per Endtt.19 (2 persons); for increased third party property damage risks Section II-I(ii) Endt..70." Now that the contents of schedule of premium are adverted to supra, it is to be next noted that a premium of Rs.30/-

[1] AIR 2003 SC 2877

was paid towards legal liability to paid driver as per Endtt.19 (2 persons). Learned standing counsel for the insurance company, therefore, contends that a plain consideration of the above terms of the schedule of the premium of the policy indicate that the said premium was collected to cover the risk of two drivers. Exhibit B1 on its plain consideration does not portray that any premium is collected to cover the risk of a conductor, cleaner, khalasi, checker (person who checks the tickets) or any other such employee.

6.2 Under Section 147 of the Act, the requirements of policies and limits of liability are envisaged. Under sub-clause (b)(i) of clause (1) of the said Section, the risks covered by the Insurance policy are enumerated. They include death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Section 147 (1) and Proviso to Section 147(1) of the Act, which are very crucial to this case, read as under:

147: <u>Requirements of policies and limits of liability.</u>

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which –

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) –

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's

Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

On a careful reading of the proviso extracted above, it is clear that the risk of specified categories of persons employed to work on a motor vehicle is statutorily covered irrespective of whether such risk is covered by the policy or not. Under the above proviso, a policy shall not be required to cover the liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, in respect of death of, or bodily injury to any such employee viz., (i) (a) a driver of the vehicle; or (b) a conductor or ticket examiner on the vehicle if it is a public service vehicle; or (c) being carried in the vehicle, if it is a goods carriage; or (ii) to cover any contractual liability. Irrespective of whether premium is paid for this category of persons by the owners of the insured vehicles, the insurance company is liable to pay compensation in view of the statutory provision.

6.3 In the case on hand, the specific pleading and evidence of the claimants is that the deceased is the cleaner on the passenger bus. PW2, the checker of the tickets, and PW3, the Conductor of the bus were also examined as witnesses. Therefore, it is not possible to accept a theory that the deceased though was a cleaner was discharging the duties of either a conductor or a checker of tickets and the contention of the insurance company that the deceased was a cleaner deserves acceptance. Under the Act Policy, in view of the provision of law, the risk of a cleaner is not covered. In view of the contents of the schedule of premium, exhibit B1, which are already noted supra, it is not possible to hold that a premium is paid and collected under the Policy to cover the risk of a cleaner. It is now necessary to deal with the question as to whether the cleaner can be considered as a passenger in the vehicle for the purpose of fastening liability on the appellant-insurance company as the Tribunal held so. In the considered view of this Court, the deceased cannot also be considered as a passenger since he travelled on the bus as a cleaner on duty. In this context, it is necessary to refer to Rule 2(i) of the A.P.Motor Vehicles Rules, 1989, which defines passenger as follows: - 'Passenger' means any person travelling in a public service vehicle other than the driver or the conductor or any employee of the permit holder while on duty.

6.3 Coming next to the relevant legal aspect, it is necessary to refer to the precedential guidance in the decision in **Ramashray Singh v. New India Assurance Co. Ltd.**, [supra]. The facts and ratio in the decision are as follows:

> **Certain passengers were carried for hire in a trekker on which the deceased therein was employed as a khalasi. His legal heirs claimed compensation under the Act. Since it was found that the vehicle was comprehensively insured, the insurance company was made liable. That order of the Commissioner was challenged before the High Court. The High Court had held that in the absence of any special contract, the rights of the parties were governed by the statute and the statute did not require the insurer to cover the liability in respect of any accident to a**

khalasi. That order was impugned in the Civil Appeal before the Supreme Court and it was contended that the policy expressly covered the death or injury to the Khalasi by drawing attention to the insurance certificate where under the heading 'particulars of the vehicle insured', there is a column which refers to 'seating capacity including driver and cleaner'. Further, it was also pointed out that under this sub-head the figure '13+1' has been inserted. Before the Supreme Court, both parties accepted that a cleaner would include a khalasi and it was submitted that a premium was paid on the basis of 13 + 1 to cover the liability. The respondent refuted the claim that any additional premium was paid to cover the risk pertaining to a khalasi. The appellant submitted that the phrases 'any person' and 'any passenger' in clauses (i) and (ii) of sub-section (b) to Section 147(1) are of wide amplitude. However, the Supreme Court noted that the proviso to sub-section carves out an exception in respect of persons and passengers, namely, employees of the insured, in other words, if the 'person' or 'passenger' is an employee then the insurer is required under the statute to cover only certain employees and held that if the concerned employee is neither a driver nor a conductor nor examiner of tickets, the insured cannot claim that the employee would come under the description of any 'person or 'passenger' and that the mere mention of the word 'cleaner' while describing the seating capacity of the vehicle does not mean that the cleaner was therefore a passenger and that, therefore, the order cannot be enforced on the basis that the deceased was a passenger.

While dealing with the next submission that the employee concerned was a conductor, the Supreme Court observed that it is doubtful whether a khalasi and a conductor are the same; but, assuming this were so, the Supreme Court held that there is nothing to show that the appellant had paid any additional premium to cover the risk of injury to a conductor and that on the contrary, the

> **policy shows that premium was paid for 13 passengers and one driver and there is no payment of premium for a conductor.**
>
> **While rejecting the contention that as the policy was a comprehensive one, it would cover all risks including the death of the khalasi, the Supreme Court held that insurance policy only covers the person or classes of persons specified in the policy and accordingly dismissed the appeal of the appellant.**

The ratio in the above decision coupled with the statutory legal position thus makes it apparent that the risk of the cleaner in the instant case is not covered either under the provisions of the Act or under the policy as no premium was collected to cover the risk of the cleaner and as the policy does not cover a cleaner who is not specified in the policy.

6.4 On the above analysis of facts and law, this Court finds that there is merit in the contention of the appellant-insurance company that the Tribunal committed an error in fastening liability on the insurance company to pay compensation to the claimants by holding that the cleaner is a passenger and that the policy covers the risk of the deceased cleaner though no premium is paid and collected to cover any such risk of a cleaner. The points are accordingly answered.

7. In the result, the appeal is allowed and the award of the Tribunal to the extent of fastening liability on the appellant-insurance company is set aside making it clear that the claimants are entitled to recover the awarded compensation from the 5th respondent herein-owner of the bus as per the award of the Tribunal and not from the appellant insurance company. The appellant-insurance company shall be at liberty to withdraw the amount

deposited pursuant to the award which is impugned and interim orders of this Court, however, after the time for further appeal is over. No costs.

Miscellaneous applications, if any, pending shall stand closed.

M. SEETHARAMA MURTI, J

05.02.2018
Vjl