

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No.1738 of 2010

JUDGMENT:

1. The appellants / claimants preferred this appeal challenging the Award and Decree dated:4-8-2010 in M.V.O.P.No.253 of 2008 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal-Cum-III Additional District Court, Kurnool at Nandyal, awarding compensation of Rs.2,58,500/- with interest at the rate of 6% per annum from the date of petition till the date of realization and directed respondent No.1 to deposit the amount with interest within one month from the date of receiving the order and in case of failure, directed to deposit with interest at the rate of 7.5% per annum. It was further observed that the appellants 1 to 5/claimants are entitled to equal shares and they are permitted to withdraw 50% of the amount from out of their respective shares and the remaining 50% shall be kept in fixed deposit in any nationalized bank for a period of three years. The entire share of the minor petitioners 2, 3 and 4 shall be kept in fixed deposit in any nationalized bank till they attain majority. If any amount already paid under section 140 of M.V. Act, shall be deducted from the compensation amount.

2. The contention of the appellants/claimants is that the Tribunal erred in exonerating respondent No.2 who is insurer of the crime vehicle though the policy was in force.

Further, contended that though the deceased was earning Rs.150/- per day, the Tribunal erred in taking into account Rs.2,000/- per month as income of the deceased, and awarded meager amount against the claim of four litigants.

3. The claim of the appellants/petitioners, in brief , is as follows:

Appellant No.1/Claimant No.1 is the wife of deceased-Rama Subbaiah, 2nd and 3rd appellants/claimants are minor sons and fourth appellant/fourth claimant is the minor daughter and fifth appellant /fifth claimant is mother of the deceased-Rama Subbaiah.

While so, on 09.7.2007, respondent No.1 engaged the deceased as Hamali for loading and unloading of Bengal gram in his tractor and trailer bearing Nos.ADD-1186 and 1187. After unloading, on the way to Alluru village, the driver of the tractor drove in rash and negligent manner with high speed, due to which, the link between tractor and trailer was cut and the trailer turned turtle. Due to this accident, Rama Subbaiah and PW.2 fell under trailer. Though Rama Subbaiah was shifted to private hospital at Koilakuntla and from there to Government General Hospital, Kurnool, he succumbed to injuries while undergoing treatment.

4. Respondent No.1 filed counter before the Tribunal contending that being the Karta of the joint family consisting of his three brothers by name A. Siva Mohan Reddy, A. Mallikarjuna Reddy and A. Neelakanta Reddy, together owned the tractor and

trailer bearing Nos.ADD 1186 and 1187 in their names. It is admitted that M. Rama Subbaiah was engaged as Hamali for loading and unloading Bengal Gram on 9.2.2007 which belongs to joint family of respondent No.1 which was involved in the accident. The deceased was 35 years and he was engaged as Hamali as on the date of accident on payment of Rs.150/- per day. The Tractor and trailer was insured with respondent No.2, vide Ex.B.2 policy, which was in force from 4.8.2006 to 3.8.2007. He also submitted that additional premium was paid to cover the risk of employees under Workmen's Compensation Act. Respondent No.2 has to indemnify liability of respondent No.1.

5. Respondent No.2 filed counter contending that appellants/ claimants have to prove that they are the legal heirs of Rama Subbaiah and that the tractor and trailer was registered in the name of respondent No.1 as he being Karta of the joint family and that the deceased was working as Hamali.

It is further contended that the driver is not competent to drive the goods vehicle as he has no valid and effective driving license at the time of accident. Tractor and trailer is being used for commercial purpose instead of agriculture purpose and thereby violated the terms and conditions of the policy.

It is further contended that respondent No.1 did not pay additional premium to cover the risk of coolies and the said tractor was used for business purpose and it was hired at the time of

accident. Therefore, respondent No.1 alone is liable to pay compensation, if any.

6. Having recorded the pleadings of both parties and on hearing, the Tribunal settled the following issues for trial:

1. Whether the deceased Madiga Rama Subbaiah died in motor accident with the tractor and trailer bearing Nos.ADD 1186 and 1187, due to rash and negligent driving by its driver?
2. Whether the petitioners are entitled for compensation, if so, to what extent and from whom?
3. To what relief?

7. On behalf of appellants / claimants, PWs.1 and 2 were examined and Exs.A1 to A5 were got marked. On behalf of respondent No.1, RW.1 was examined and Ex.B1 was got marked. On behalf of respondent No.2, RW.2 was examined and Exs.B2 and B3 were got marked.

8. Now the point that arises for determination is ?

“Whether the award of the Tribunal suffers from any legal infirmities warranting interference in this Appeal?”

The learned Counsel for the appellants/claimants contended that the Tribunal erred in taking the income of the deceased at Rs.2000/- per month and also exonerating the second respondent-Insurance company from its liability and granting meager compensation.

Per contra, it is the contention of the second respondent-Insurance Company that no premium was paid covering the risk of labour/hamali and the Tribunal rightly held that the deceased was the gratuitous passenger and hence it (Insurance Company) is exonerated from its liability.

9. Since this is an appeal preferred by the claimants, there is no dispute with regard to the finding of the Tribunal that the accident was due to rash and negligent driving of the driver of the tractor and trailer bearing Nos. ADD 1186 and 1187. The deceased Ramasubbaiah died in the accident involving the said tractor and trailer on 9.7.2007.

10. Before the Tribunal, on behalf of the appellants/claimants, P.Ws.1 and 2 were examined and Exs.A.1 to A.5, i.e. Certified copy of FIR, Certified copy of Inquest report, Certified copy of Postmortem report, Certified copy of MVI report and Certified copy of charge sheet respectively, were got marked. On behalf of the second respondent, R.Ws.1 and 2 were examined and Exs.B.1 to B.3, i.e. Certificate issued by VRO, Alluru village, Uyyalawada Mandal, Copy of insurance policy and Xerox copy of house hold card, were got marked.

11. Ex.B.2 is the insurance policy. On the basis of the evidence adduced before the Tribunal, it was found that the accident occurred on account of rash and negligent driving of the driver of the tractor and trailer bearing Nos. ADD 1186 and 1187 and the death of

the deceased was directly traceable as per Exs.A.1 to A.3 and A.5. Except exoneration of the second respondent-Insurance Company and assessing annual income of the deceased and amounts of compensation awarded thereon, the appellants/claimants do not seriously dispute the findings of the Tribunal.

12. The appellants/claimants filed the claim petition under Section 166 of the MV Act. The first claimant Madiga Venkata Lakshamma, is none other than the wife of the deceased Ramasubbaiah. Her clinching evidence is that appellants 2 to 4/claimants 2 to 4 are the minor children and fifth appellant/fifth claimant is the age old mother of the deceased Ramasubbaiah. There is no cross examination with regard to their relationship and their dependency on the income of the deceased Ramasubbaiah.

13. The main controversy is about the liability or lack of it, on the part of the second respondent-Insurance Company to pay compensation. R.W.1 is the first respondent whose evidence corroborates the evidence of PW.2 and is supported by Ex.B.1—certificate issued by the VRO, Alluru Village. The consistent evidence of P.W.2 and R.W.1 is that the alleged tractor and trailer bearing Nos. ADD 1186 and 1187 involved in the accident was registered in the name of the first respondent/R.W.1 and it belongs to the joint family consisting of R.W.1 and his three brothers by name (1) A. Sivamohan Reddy, (2) A.Mallikarjuna Reddy and (3) A.Neelakanteswara Reddy. R.W.1 being the elder is looking after all the affairs as 'kartha' of the joint family and therefore the alleged

tractor and trailer was registered in his name. The VRO under Ex.B.1 Certificate certified that all the above four brothers were living jointly and cultivating the lands under joint family. R.W.2, the Branch Manager of the second respondent-Insurance Company during his cross examination admitted that A.Mallikarjuna Reddy is the brother of the first respondent and they are living in joint family. Basing on the consistent evidence of R.W.2 which is corroborated by the evidence of R.W.1 supported by Ex.B.1, the Tribunal held that since R.W.1 was the elder member and 'kartha' of the jointly family, the alleged tractor and trailer involved in the accident was purchased in the name of R.W.1 and it is a joint family property consisting of the four brothers, by name, (1) A.Siva Ramakrishna Reddy, (2) A. Sivamohan Reddy, (3) A.Mallikarjuna Reddy and (4) A.Neelakanteswara Reddy.

14. The Branch Manager of the second respondent-Insurance Company Sri T.Gangi Reddy was examined as R.W.2 and his evidence is that the first respondent/R.W.1 violated the terms and conditions of the policy and therefore it need not to pay any compensation to the claimants. He further deposed that the first respondent has not paid additional premium for the coolies who were engaged on the alleged tractor and trailer for loading and unloading. However he denied the suggestion that Ex.B.2 covers the risk of the deceased inasmuch as additional premium was not paid for the coolies. Therefore it is not in dispute that the tractor and trailer involved in the accident was insured with the second respondent under Ex.B.2 policy,

15. From the pleading urged in the claim petition as well as deposition of P.W.1, it is clear that on 9.2.2007 near Saibaba Temple on the way between Koilakuntla -Gunjalapadu village, within the village limits of Koilakuntla, the accident took place involving the tractor and trailer bearing Nos. ADD 1186 and 1187 and in the said accident, her husband died. The first respondent engaged her husband as hamali for loading Bengal gram at Alluru village and unloading in the godown at Koilakuntla. The said tractor and trailer belongs to the first respondent's family who is the kartha of the joint family. One Shaik Imam Khasim drove the said tractor and trailer in rash and negligent manner with high speed, due to which, the link between the tractor engine and trailer was snapped and trailer turned turtle, as a result of which, her husband Rama Subbaiah and another hamali by name M. Raghu Ram fell down and received injuries. Immediately after the accident, they were taken to a private hospital at Koilakuntla where the doctor referred her husband to Kurnool for better treatment and accordingly her husband was taken to Government General Hospital, Kurnool, where he died while undergoing treatment.

16. The evidence of P.W.2 corroborates the evidence of P.W.1 and also the evidence of R.W.1. He deposed that as on the date of accident, the first respondent family transported Bengal gram belonging to their family through the offending tractor and trailer to godown at Koilakuntla. It is also a fact that after unloading the

Bengal gram at the godown, while going to Yeggoni village to receive his (R.W.1) relatives, the accident took place.

17. The clear evidence of R.W.1, owner of the tractor and trailer, who engaged the deceased as hamali/cooli for loading and unloading the Bengal gram was that the deceased was working on his tractor and trailer for loading and unloading. He also admits that the accident took place due to negligent driving of the tractor and trailer by its driver. He further admits that after unloading the Bengal gram, the tractor was taken to Yeggoni village to pickup his relatives for getting them to his house and the accident took place while his relatives being taken in the tractor from Yeggoni village to his house. He also admits that in the FIR-Ex.A.1, the name of the driver of the offending tractor was not mentioned. Basing on the evidence of P.Ws.1 and 2 and admissions of RW.1, supported by Exs.A.1-FIR, A.2-Inquest report, A.3-Postmortem report, A.4-MVI report and A.5-chargesheet, the Tribunal came to the conclusion that the deceased was engaged as hamali/cooli on the offending tractor and trailer for loading Bengal gram at Alluru village and unloading in godown at Koilakuntla.

18. The only ground on which the Tribunal exonerated the second respondent is that while the deceased was travelling in the offending tractor and trailer after unloading the goods the accident took place and it was indirectly suggested that a person engaged to load and unload the vehicle is not supposed to travel in it after the

work is over. On this basis, the deceased was treated as gratuitous passenger on the tractor and trailer.

19. At this juncture, it is necessary to refer Section 147 (1) of the MV Act, which reads as under:

“Section 147: Requirements of policies and limits of liability:--(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 authorized insurer; or
- (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, including owner of the goods or his authorized 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;
 - (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 or 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 a 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.

Explanation:-For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.”

20. The obligation and necessity to insure the vehicle before it is put to use, in a public place, is cast under Section 146 of the Act. Section 147 indicates the extent to which, the policy must cover the liability. Clause (a) of sub-section (1) mandates that the policy must be issued by the authorized insurer. Clause (b) refers to the classes of persons, that must be covered by the policy. The extent of coverage is referred to, in sub-section (2). Sub-clause (i) of sub-section (1)(b) deals with the obligation to meet the liability incurred by the owner of the vehicle, in respect of death or bodily injury, or damage of any property of a third party. Through Act 54 of 1994, the owner of the goods or his authorized representative, being carried in a vehicle, is specifically added to this category. Sub-clause (ii) of sub-section (1)(b) deals with the obligation arising out of death, or bodily injury to a passenger of a public service vehicle.

21. Proviso to sub-section (1) of Section 147 is, in a way, the continuation of the list of persons, that are required to be covered in the event of any accident. It covers the persons employed in the vehicle as against third parties, or passengers. These include, (a) drivers, irrespective of class of vehicle, (b) conductors, engaged in a public service vehicle, and (c) persons, being carried in a goods carriage, obviously as labourers. These classes of persons were dealt with under the proviso, obviously because the Parliament felt it fit, not only to identify the persons, but also the extent of coverage under the one and the same provision. As regards this category of persons, the liability was restricted to the one, under the Workmen's Compensation Act. Reference to that Act clearly suggests that the persons mentioned in the proviso are workmen of one category, or the other, in contradiction to third parties mentioned in sub-section (1)(b)(i), and passengers in a public service vehicle (1)(b)(ii). If sub-section (1) is read together with the proviso, it emerges that the Act requires the insurance policy to cover three categories of persons, viz., third parties, passengers in a public service vehicle and employees, such as drivers, conductors and labourers, engaged in a goods vehicle.

22. Neither under the Act, nor the Rules made thereunder, there is any condition to the effect that a person engaged as a worker or a Coolie in a goods vehicle must not travel in it, once the loading or unloading of the goods vehicle is over. It is not uncommon that the Coolies or labourers have to be taken along with the vehicles for unloading, and after that work is over, they be brought to the

place, from where they were picked up. In holding that the deceased became a gratuitous passenger, in a goods vehicle after he has unloaded the goods, the Tribunal has virtually read something into the provision, which did not exist.

23. The Tribunal placed strong reliance on the decision of this Court in *S.K. PEERAMMA Vs. DAMA MASTHANAI AH AND ANR* {2007 (5) alt 432} and on the decision of the Apex Court in *NATIONAL INSURANCE CO.LTD Vs. RATTANI & ORS* (AIR 2009 SC 1499). In both the decisions, it was held that the contents of FIR that were recorded at the earliest point of time immediately after the accident and relied on by the petitioner are to be taken into consideration when there is discrepancy in the oral and documentary evidence, and accordingly held that the deceased is a gratuitous passenger, but not hamali. The Tribunal proceeded under the assumption that in respect of the persons mentioned in proviso to sub-section (1) of Section 147, taking out of insurance policy is not mandatory and it is purely optional.

A reading of Section 147(1) of the MV Act goes to suggest that it deals with requirement of policies. In other words, different kinds of policies can be taken covering different contingencies, different persons, different vehicles and different risks. Further, it appears from sub-section (1) of Section 147 of the Act that the owner has a discretion to take a policy or policies covering person or persons, in which case, basing on the nature and terms and conditions of the policy, the premium has to be paid. It implies that unless and until premium is paid, depending upon the nature of the

policy or the terms and conditions of the policy, the insurer is not under obligation to pay the compensation beyond the scope of agreement under the policy. In other words, it is not mandatory for the insured to take policy or policies covering all types of persons or all types of vehicles or risks. Though under sub-clause (c) of clause (i) of proviso to sub-section (1) of Section 147 of the Act, it is mentioned that "if it is a goods carrier being carried in a vehicle" The policy need not be taken, I am of the view that it does not mean that the insurer is automatically liable. By necessary implication, when there is no requirement to take policy and, consequently, when no policy is taken, no risk can be covered by any policy. Therefore, the language employed in sub-clause (c) cannot be relied on nor it is useful in any manner to the claimant. (See: ***P. VENKATA RAMANA Vs. CHINTAGUNTLA KUMARI AND OTHERS***: {2010(2) ALD 281})

24. From the foregoing discussion of facts and circumstances of the case, I am of the considered view that taking of insurance policy in respect of the persons mentioned in proviso to sub-section (1) of Section 147 of MV Act i.e. driver, conductor, and persons in a goods carrier is not optional. What is left to the discretion of the owner of the vehicle is to have coverage of insurance for these persons, over and above, what is stipulated under the Workmen's Compensation Act. To the extent it is mentioned under that Act, coverage for those persons is mandatory. The coolies/hamalies/labourers engaged for transporting, loading and unloading on the tractor are essential operators and it is they who become instrumental in operating the vehicle. The third parties

come into picture on sheer accident, and the passengers, only to the extent they travel in the vehicle. It is difficult to imagine that the Parliament intended to make it obligatory for the owner of the vehicle to take insurance policy covering the liability towards third parties and passengers, but not to those who are essential for putting the vehicle to use.

25. Under Ex.B.2 policy, the owner/first respondent paid additional premium covering the workmen i.e. driver and he has not paid any premium for the hamalies/labourers who were being engaged for loading and unloading the tractor and trailer bearing registration Nos. ADD 1186 and 1187. The parties to the contract should bound by the terms and conditions. The owner/first respondent violated the mandatory obligation of payment of premium to the hamalies/labourers who were being engaged for loading and unloading. As discussed supra, it is not uncommon that the Coolies or labourers have to be taken along with the vehicles for unloading, and after that work is over, they be brought to the place, from where they were picked up. Therefore the finding of the Tribunal that the deceased travelled on the offending tractor and trailer at the time of accident as a 'gratuitous passenger' is erroneous, illegal and liable to be set aside. The deceased was labourer/coolie on the tractor and trailer and since the first respondent did not pay additional premium covering risk of hamalies/labourers engaged for loading and unloading, the Insurance Company is absolved from its liability.

In similar lines, the Apex Court in ***NATIONAL INSURANCE CO. LTD. VS. BOMMITHI SUBBHAYAMMA AND ORS.***{ (2005)12SCC 243} observed as follows:

“ ... ‘In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefore.’

In ***ASHA RANI*** (AIR 2003 SC 607) it has been noticed that Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 of the 1988 Act speaks of liability which may be incurred by the owner of a vehicle in respect of 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. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers travelling in the vehicle. The premium in view of the 1994 Amendment would only cover a third party as also the owner of the goods for his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people."

The same view was reiterated in ***NATIONAL INSURANCE CO. LTD. V. CHALLA BHARATHAMMA AND ORS.***{(2004)8SCC517} ; ***PRAMOD KUMAR AGRAWAL AND ANR. V. MUSHTARI BEGUM (Smt.) AND ORS.***{AIR2004SC4360} and

also in *NATIONAL INSURANCE CO. LTD. V. V. CHINNAMMA AND ORS.*{AIR2004SC4338}”

26. The consistent evidence of P.W.1 is that her husband was engaged as hamali on the offending tractor and trailer for loading and unloading and he used to earn Rs.150/- per day i.e. Rs.4500/- per month. R.W.1 who is the owner of the offending tractor and trailer also deposed that he engaged the deceased as hamali for loading and unloading and used to pay Rs.150/- per month towards his wages for loading and unloading. Absolutely no rebuttal evidence was adduced to rebut the income of the deceased as deposed by P.W.1 and R.W.1. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning at a sum of Rs.2000/- per month. Secondly, the Appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimants, in my view, in the facts of the present case, the Tribunal should have accepted the claim of the claimants. In my considered view, the claim was honest and bona fide and therefore there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs.4500/- to Rs.2000/- per month. (See. *Ramachandrappa Vs. Royal Sundaram* {(2011) 13 SCC 236} In view thereof, the income of the deceased can be taken at Rs.4500/- per month.

27. With regard to the age of the deceased, the evidence of P.W.1 is that her husband was 35 years as on the date of accident. Ex.B.3 is a copy of ration card wherein age of the deceased was noted as 35 years as on the date of recording the particulars of the family members on 18.5.2006 for issuance house hold card whereas the accident occurred on 9.2.2007, that is, one year thereafter. In Ex.A.1 to A.5, the age of the deceased was noted as 36 years. Thus, despite documentary proof, by considering the evidence of P.W.1 supported by Exs.A.1 to A.5 and Ex.B.3, the age of the deceased can certainly be taken as 36 years by the date of death.

28. The evidence of P.Ws.1 and 2 which is corroborated by the admissions of R.W.1 goes to suggest that there is direct nexus to the accident and death of the deceased Ramasubbaiah. Having considered the age of the deceased as 36 years, the relevant multiplier applicable as per the decision of the Apex Court in ***SARALA VERMA Vs. DELHI TRANSPORT CORPORATION AND ANOTHER*** (2009 ACJ 1298), is '15' and income of the deceased as discussed supra is taken at Rs.4,500/- per month. If $\frac{1}{3}$ rd is deducted towards his personal expenses, then the contribution to his family would come to Rs.3000/- per month or Rs.36,000/- per annum. By applying the multiplier, the loss of dependency would come to Rs.36,000/- x 15 = Rs.5,40,000/-.

29. Though the claimants claimed Rs.10,000/- towards transport charges, they did not file any piece of paper in proof for the same. The Tribunal has not awarded any amount under the head of

transport charges. Certainly for shifting of the injured from the place of accident to private hospital at Koilakuntla, thereafter to Kurnool and after death, shifting of the dead body from hospital to native place, some expenditure certainly be incurred by the claimants. Considering the same, awarding of Rs.10,000/- towards transportation charges is just and proper and accordingly the same is awarded.

30. Besides this, as per the decision of the Apex Court in *NATIONAL INSURANCE COMPANY LIMITED Vs. PRANAY SETHI AND Ors* (2017 ACJ 2700}, under conventional heads, namely, loss of estate, loss of consortium and funeral expenses, the appellants/claimants are entitled to receive Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively.

31. In *MANUARA KHATUN AND OTHERS Vs. RAJESH KUMAR SINGH AND OTHERS* { (1974) 4 SCC 796}, it was held on the facts of the case therein that since the victim was travelling in offending vehicle as 'gratuitous passenger' and hence the insurance company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However keeping in view the benevolent object of the Act and other relevant factors arising in the case, directions against the insurance company were issued to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of 'pay and recover'.

In the case on hand, the owner/first respondent is bound to comply the mandatory provision by taking policy covering the risk of hamali/labour. The parties to Ex.B.2 policy are bound by the terms and conditions therein. Since the owner/insured failed to pay the additional premium covering the risk of hamali/labour engaged for loading and unloading, the insurance company cannot be held liable to suffer liability arising out of accident on the strength of Ex.B.2 policy. However, keeping in view the fact that the appellants/claimants are poor and labourers and the MV Act being benevolent legislation, the Insurance Company is directed to pay the awarded sum to the claimants and then recover the said amount from the insured/first respondent in the same proceedings by applying the principle 'pay and recover'.

32. From the foregoing facts and circumstances of the case discussed hereinabove, I am of the considered view that the first respondent engaged the deceased Ramasubbaiah as hamali/coolie for loading and unloading the Bengal gram on his tractor and trailer and the accident occurred after unloading the load. As discussed supra, the finding of the Tribunal that he is a gratuitous passenger is erroneous and liable to be set aside and accordingly the finding of the Tribunal that the deceased was a gratuitous passenger is set aside and it is recorded that his presence as hamali in the offending tractor for loading and unloading cannot be termed as gratuitous passenger. It is to be seen that it is mandatory on the part of the first respondent/owner to pay additional premium covering the risk of the labour engaged for loading and unloading. The first respondent

violated the terms and conditions of the policy. Pertinent to note, both the parties i.e. respondents 1 and 2/ owner and insurer are bound by the terms and conditions of the insurance policy. Since the first respondent did not pay the additional premium covering the risk of the labour/hamali/coolie engaged on the tractor and trailer for loading and unloading, the second respondent-Insurance company is exonerated from its liability.

Further the Tribunal erred in applying the multiplier and also assessing the income of the deceased at Rs.2,000/- per month, even though there is no rebuttal evidence to the evidence of P.W.1 and R.W.1. Therefore the income of the deceased was assessed at Rs.4,500/- per month by following the decision of the Apex Court in **RAMACHANDRAPPA Vs. ROYAL SUNDARAM** (supra) and took the age of the deceased as 36 years by the date of death based on the evidence of P.W.1 and Exs. A.1 to A.5 and Ex.B.3. By following the decision of the Apex Court in **SARLA VARMA** case (supra), the relevant multiplier applicable for the age of the deceased at 36 years is '15' and by applying the same, assessed the loss of dependency. The total compensation payable to the appellants/claimants is thus arrived at Rs.5,40,000/- + Rs.10,000/- + Rs. 40,000/- + Rs. 15,000/- + 15,000/- = Rs. 6,20,000/-.

33. The Apex Court in **NAGAPPA Vs. GURUDAYAL SINGH** { 2003 (1) ALD 1 (SC)} held that there is no restriction that compensation could be awarded only up to the amount claimed by the claimants and in appropriate cases wherefrom the evidence brought on record, if the Tribunal/Court considers that the claimant is

entitled to get more compensation than claimed, the Tribunal/Court may pass such award. Further it is to be seen that the loss caused to the family on the death of a near and dear one can hardly be compensated in monetary terms. Section 168 of the Act uses the word 'just compensation' which, in my opinion, should be assigned a broad meaning and that if some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined. In view of the aforesaid decision and having considered the evidence brought on record in the case on hand, the claimants are entitled to receive compensation of Rs.6,20,000/-.

34. Accordingly the appeal is allowed with costs while setting aside and modifying the Award and Decree dated 04.08.2010 passed in OP.No.253 of 2008 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Kurnool, at Nandyal. Consequently the appellants/claimants are entitled to be awarded total compensation of Rs.6,20,000/-.

35. Considering that the second respondent being the insurer and the appellants/claimants being the poor and labourers, and that the MV Act being a beneficial legislation, by following the decisions referred supra, the second respondent-Insurance company is directed to deposit the awarded sum hereinabove with interest at 7.5% per annum from the date of claim petition i.e. 09.07.2008 till the

date of deposit and thereafter recover the same from the first respondent/owner in the same proceedings. The second respondent/Insurance Company is directed to deposit the awarded sum hereinabove, after deducting the amount if any already paid, within thirty days from the date of receipt of a copy of this judgment.

36. The compensation amount awarded hereinabove is apportioned among the appellants/claimants as under:

Appellant No.1	: Rs.2,50,000/-
Appellant No.2	: Rs.1,00,000/-
Appellant No.3	: Rs.1,00,000/-
Appellant No.4	: Rs.1,00,000/-
Appellant No.5	: Rs. 70,000/-

On such depositing being made by the second respondent/Insurance Company, the first and fifth appellants are permitted to withdraw their share amounts as indicated hereinabove. The appellants 2 to 4 being minors, the compensation amount apportioned among them shall be kept in Fixed Deposits of any nationalised bank till they attain majority. After attaining the majority, they are permitted to withdraw their share amounts according to their need and necessity, by filing necessary application before the Tribunal.

37. The appellants/claimants are directed to pay deficit court fee on the amount awarded exceeding the claim amount within thirty days from the date of receipt of a copy of this judgment.

38. Advocate fee is fixed at Rs.2,500/-.

39. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE N. BALAYOGI

Dated 26th June, 2018.
Msnr_x

