HON'BLE SRI JUSTICE T.AMARNATH GOUD

<u>M.A.C.M.A. Nos. 650 of 2006, 3326 of 2008 & 3944 of 2008</u>

<u>COMMON JUDGMENT</u>:

Since all these appeals arise out of the same accident and the appellant is a one and the same, these appeals are being disposed of by this common judgment.

2. All these appeals are filed by the insurance company.

3. M.A.C.M.A.No.650 of 2006 is filed questioning the order passed in M.V.O.P.No.532 of 2004, dated 28-06-2005; M.A.C.M.A.No.3326 of 2008 is filed questioning the order passed in M.V.O.P.No.294 of 2004, dated 13-09-2005; and M.A.C.M.A.No. 3944 of 2008 is filed questioning the order passed in M.V.O.P.No.230 of 2004, dated 13-09-2005 of the Motor Accident Claims Tribunal-cum- II Additional District Judge, Warangal (for short, the Tribunal).

4. Brief facts of all these cases are that when the claimants are traveling in a tractor and trailer bearing No.AP-36V-3439-3440 with loads of cotton bags and proceeding towards Grain Market, Warangal, due to the rash and negligent driving of the driver, the tractor turned turtle, due to which, the claimants and others along with goods in the vehicle fell down on the ground and sustained injuries. Hence, the claimants have filed these appeals claiming compensation for the injuries sustained by them.

5. The Tribunal partly allowed the claim petitions and granted compensation to the claimants. Aggrieved by the same, the appellant-insurer filed these appeals on the issue of fastening of liability against the insurer.

6. Sri P.Bhanu Prakash, learned Standing Counsel for the appellant-insurer, vehemently contends that at the time of accident, the claimants along with other labourers were traveling in the goods vehicle during the course of employment as labourers, therefore, they are traveling as unauthorized passengers since the crime vehicle can be used only for the purpose of agriculture but not for commercial purpose and as per policy conditions also, the crime vehicle was not covered with insurance policy. Hence, he prayed to allow all the appeals by setting aside the impugned orders of the Tribunal.

7. Before the Tribunal, the insurer contended that according to the oral evidence adduced by the claimants, the driver of the vehicle is solely responsible for the alleged accident and due to his rash and negligent driving only, the accident occurred. Further, the claimants, in their cross examination, have categorically stated that they were only labourers engaged for the purpose of loading and unloading the cotton bags. The details of the wages paid to them per bag have also been referred to by all of them. Thus their evidence is not to the effect that they are owners of the said cotton bags which are already there in the crime vehicle. The Tribunal also gave a finding to the effect that the contention of the insurer that there is clear violation

of the policy terms in using the offending vehicle, which is not a commercial or goods vehicle, is not supported by any documentary evidence. It further observed that Ex.B-1, copy of policy, describes the insured vehicle as goods carrying commercial vehicle. On the date of accident, it was in force. The premium collected under it was in respect of seven employees, one non-fare paying passenger and premium collected in respect of the trailor is on account of non-agriculture purpose. As per the evidence of insurer, the vehicle is not a transport vehicle or goods carrying vehicle. Such version is against the contents of Ex.B-1. Ex.B-1 is covering the liability relating to labourers and it is a proved fact. Thus, the liability of the insurer clearly stands and cannot avoid payment of compensation.

8. In view of the above, this Court has no hesitation to confirm the orders passed by the Tribunal and fastening the liability against the insurance company and rejecting the appeals of the insurer.

9. Therefore, all the appeals fail and are accordingly dismissed confirming the orders passed by the Tribunal. No costs.

10. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

JUSTICE AMARNATH GOUD

Date: 17-09-2019
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