THE HON'BLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS APPEAL Nos.1148, 1108, 1109 and 1171 of 2008

COMMON JUDGMENT:

1. Since common question of law is involved in the all the above Appeals, they are disposed of simultaneously.

2. The challenge in the present Appeals viz., C.M.A.No.1148 of 2008 is the Order dated 21.01.2006 in W.C.No.8 of 2004; C.M.A.No.1108 of 2008 is Order dated 21.01.2006 in W.C.No.7 of 2004; C.M.A.No.1109 of 2008 is Order dated 21.01.2006 in W.C.No.8 of 2002; C.M.A.No. 1171 of 2008 is Order dated 21.01.2006 in W.C.No.6 of 2004.

3. The claims made by the legal heirs of the respective deceased employees, who died in the accident that occurred on 24.03.2000 was allowed by the Commissioner, granting compensation and fixing joint and several liability on M/s.Yadav Yuvajana Sangam, who is the opposite party No.1 and United India Insurance Company Limited, who is the opposite party No.2 before the Commissioner.

4. The main grievance of the appellant in all the Appeals is that the vehicle insured by the appellant-Insurance Company is

the Tractor-Trailer, which was newly purchased. As per the terms and conditions of the Insurance policy, the said vehicle was insured for agricultural purpose only. Whereas the subject vehicle was used for carrying the passengers to attend a marriage. When the persons were travelling to attend marriage, an accident occurred resulting in death of four persons and causing injuries to sixteen others. Therefore, the Insurance Company is not liable for payment of compensation.

4. It is also the case of the appellant that the deceased persons are not employees as there is no employee and employer relationship between the deceased and the opposite party No.1. Hence, the claim before the Commissioner is not maintainable as the persons were only gratuitous passengers travelling in the vehicle and the policy does not cover the risk of the deceased.

5. Heard learned counsel for the appellant. There is no representation from the respondents.

6. The substantial question of law that falls for consideration is as follows:-

> *Whether the findings of the Commissioner holding the deceased as workmen when the First Information Report and final report relied by the claimants show that they were the passengers travelling in the vehicle suffer from any perversity ?*

7. The claim statements of respondents-applicants show that the deceased were employees employed by the opposite party No.1 as workmen and the accident occurred during the course of employment.

8. In support of the case the applicants examined AW1 and marked Exs. A1 to A5. The opposite party Nos.1 and 2 examined RW1 and RW2 and marked Ex D1.

9. A perusal of the record shows that the Commissioner accepted the employee and employer relationship between the deceased and opposite party No.1 and fastened joint and several liability on the owner of the vehicle as well as the insured. Aggrieved by the same, the above Appeals are preferred at the instance of the Insurance Company.

10. In the counter, the opposite party No.1 admitted that the deceased were workmen and basing on the said admissions, the Commissioner has given findings that there exists employer and employee relationship between the opposite party No.1 and the deceased workmen.

11. A close reading of the documents relied upon by the applicants-claimants more particularly the first information report, charge sheet and other criminal records, clearly

demonstrate that all the persons boarded the vehicle to attend a marriage and while they were travelling in the said vehicle, an accident occurred. The Insurance company did not dispute the contents of Exs. A1 and A2 and relied on F.I.R. and charge sheet, which clearly demonstrates that the deceased were travelling as passengers of the vehicle and not as workmen. But the Insurance Company contended that the Commissioner should not have given weightage to the claim made by opposite party No.1 who stated that the deceased were workmen. The evidence of the applicants clearly demonstrates that at the time of accident, the deceased were travelling as passengers and it was a goods vehicle. The contention of the Insurance Company was that the vehicle was registered and insured for agricultural purpose contrary to Ex D2. Ex D2 clearly demonstrates that the vehicle is registered for commercial purpose. Even though, the vehicle is registered for commercial purpose, it is a goods vehicle and labourers are permitted to travel in the vehicle and not the passengers. In the present case, the deceased were not workmen but they were travelling as passengers. The Commissioner ought to have taken into consideration the F.I.R. and charge sheet while holding that the deceased were workmen. Such findings of the

Commissioner suffer from perversity. Therefore, the Appeals requir to be allowed. In pursuance of the interim order granted by this Court, the applicants-claimants were permitted to withdraw a sum of Rs.60,000/- without furnishing any security and the balance shall be kept in a fixed deposit for a period of three months in a nationalized bank.

12. In view of the said facts and circumstances, the appellant-Insurance Company is permitted to recover the paid amount from the owner of the vehicle and not from the claimants.

13. With the above observation, the Civil Miscellaneous Appeals are allowed. The impugned Order dated 21.01.2006 in W.C.Nos.6, 7, and 8 of 2004 and 8 of 2002 is set aside to the extent of fixing liability on the appellant-Insurance Company and the rest of findings of the Commissioner holds good. No costs.

Miscellaneous Petitions, pending if any, shall stand closed.

JUSTICE M.LAXMAN

05.01.2023
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Dated: 05.01.2023

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