
(2010) 12 KAR CK 0150

In the Karnataka High Court

Case No : MFA No's. 6556, 6557, 6558 and 6559 of 2006

National Insurance Company Limited

APPELLANT

Vs

Sri Maruthi and Others

RESPONDENT

Date of Decision : 27-12-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147 (b), 147 (ii), 41 (4)

Citation : (2010) 12 KAR CK 0150

Hon'ble Judges : Manjula Chellur, J;L. Narayana Swamy, J

Bench : Division Bench

Advocate : B.C. Seetharama Rao, for the Appellant; Babu H. Metagudda, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Manjula Chellur, J.—Before the Commissioner for Workmens' Compensation, Bagalkot, totally 5 claimants filed claim petitions bearing Nos. WCA.NF. 194/2005, 195/2005, 196/2005 & 197/2005. The Appellant herein was the Respondent insurer, the Respondents 1 to 4 herein were the claimants and the 5th Respondent herein was the Respondent insured before the Commissioner. The contentions are that one of the Respondent by name Mr. Venkappa was the owner of the tractor-trailer bearing No. KA.24A. 24/t-2863-2864. The Respondents/claimants claimed to be working as coolies under the said owner. According to them on 23.9.2005 as per the directions of the employer-cum-owner of the tractor-trailer in question, travelled in the said tractor-trailer as coolies under him to fence stones on the ridge of the land of the employer. While they were travelling along with the fencing stones, when they reached the Budni K.D. village, because of a ditch, the tractor-trailer along with coolies fell into the ditch. As a result, all of them sustained grievous injuries. They were all first taken to Primary Health Centre at Hoskote and then to a specialist at Mudhol. According to them, the injuries sustained by them have resulted in permanent disability resulting in total loss of earning capacity. They also claimed that they

were earning about Rs. 4000/- per month as salary apart from Rs. 25/- as bata every day.

2. As against this the 5th Respondent herein, admits being the owner of the tractor-trailer in question, so also factum of all the claimants (Respondents 1 to 4 herein) working as coolies under him and another claimant as driver in the said tractor-trailer. He admits the occurrence of the accident and also sustenance of injuries by the claimants. He further claims the tractor-trailer in question being insured with the Appellant Insurance Company and seeks indemnifying him against the claims of the claimants.

3. So far as the Appellant-insurer, none of the claimants were neither coolies nor the 5th Respondent therein was a driver under the insured. He further denies the occurrence of the accident also. It is contended that none of the claimants sustained any injuries and all the averments regarding shifting them to the hospital at Budni K.D., etc., are denied. They also deny the earnings of the claimants and according to them, 5th claimant /driver did not have a valid driving licence. The Appellant/insurer further contended that it was not at all liable to pay any compensation and the coverage given to the parties was a special package insurance called Miscellaneous & Special Type of Vehicles Policy B" package by paying Rs. 3.202/-, therefore, none of the workmen are covered.

4. The Commissioner after raising several points on the controversies, ultimately held that all the claimants sustained employment injuries arising out of and during the course of the employment. Finally, the Commissioner held that the insurer is liable to indemnify the owner as the tractor-trailer was a goods vehicle meant for carrying agricultural operations and all the claimants being coolies under the owner, were proceeding towards the land of the owner in respect of agricultural operations i.e., fencing the ridge with the stones. The driver of the tractor had also produced valid licence as on the date of the accident. Having regard to all the facts and circumstances, ultimately the Commissioner depending upon the nature of injuries, percentage of disability and the income of each of the claimant, proceeded to assess the compensation and directed the insurer to pay the said amount. Aggrieved by the said award, the insurer has approached this Court in these appeals.

5. The award of the Commissioner is challenged so far as four employees/coolies except the 5th claimant referred in the award of the Commissioner, who was a driver under the owner of the vehicle.

6. The contention of the insurer/Appellant in all the appeals is the Special Policy issued to the owner as stated above covers the risk of only owner-cum-driver and not other workmen. Therefore, the Commissioner was not justified in awarding compensation to all the claimants irrespective of nature of work they were doing for the owner of the vehicle. According to the Appellant, Ex.P.7P. 7A & B - the Registration Certificates indicate only one person being permitted to travel in the tractor-trailer. Therefore, even if the tractor-trailer is considered as a

goods transport vehicle, the case of the coolies is not covered. It is further contended that in the agricultural tractor-trailer, there is no need to engage injured Respondents to operate the said vehicle and in view of the fact that Section 147 of the Motor Vehicles Act contemplates covering the risk of driver, who was employed to operate the vehicle only and other risk is not at all covered under the policy in question. According to learned Counsel, even assessment of loss of earning capacity at 60% is exorbitant and exaggerated. The wages of the coolies were also assessed at Rs. 3,500/- per month ignoring the realities at the relevant point of time. With these averments, he has sought for allowing the appeals by setting aside the award of the Commissioner for Workmen's Compensation.

7. During the course of arguments, the learned Counsel for the Appellant produces true copy of the Notification No. SO.12480. 1248[E] dated 5.11.2004 issued u/s 41(4) of the Motor Vehicles Act specifying the particulars required to be included in the Certificate of Registration. As per this Notification mentioned above, classification of Transport and non-transport vehicle are made which would be referred to later.

8. According to the learned Counsel for the Appellant, the tractor-trailer in question was covered under Miscellaneous and Special Vehicle Policy "B" Package between 11.8.2005 to 10.8.2006 and had covered the risk of the own damage to the tractor-trailer, third party risk and also personal accident cover to the owner-cum-driver. As no additional premium had been collected to cover the risk of any other workman, the case of the claimants-coolies other than the driver is not covered under the policy. According to him, tractor-trailer is neither a goods vehicle nor a transport vehicle. He further contends that if it is a goods vehicle, there would be statutory coverage to the workman being carried in that vehicle to the extent of number of persons permitted to be carried out in that vehicle as per the permit issued by the R.T.O.

9. It is further contended that the said vehicle not being a transport vehicle, there is no coverage to any person being carried in the said vehicle. Taking into consideration the definition of agricultural tractor and trailer, one would definitely understand that it is not a transport vehicle and therefore proviso (I) to Section 147(b) and (ii) which is applicable to public service vehicle is not attracted to the tractor-trailer unit. To substantiate this proposition he places reliance on Rule 100(6) of the Karnataka Motor Vehicle Rules and so also Rule 226.

10. As the rule says, no person other than the attendant or attendants required by Rule 226 shall be carried on a trailer which is a goods vehicle. Therefore, no workman could be carried on the tractor-trailer except the driver of the tractor-trailer. The attendants of tractor are referred to under Rule 226 of the Karnataka Motor Vehicle Rules wherein it is said a trailer being run by a motor vehicle, there shall be a person not being less than 20 years of age, who could capably discharge his duties like applying breaks of the trailer, can be carried. Therefore, the person who is entitled to travel in a trailer must be a person aged about 20

years competent to apply the breaks. Hence, learned Counsel contends from Rule 100(6) read with Rule 226(d) it is crystal clear that an agricultural trailer cannot even carry an attendant. He relies upon Ex.P.7P. 7A -Certificate of Registration, at Item No. 14, which says including the driver, the seating capacity is "1", therefore, the policy issued by the Appellant does not cover the cases of workmen (coolies) other than the driver. According to the learned Counsel for the Appellant, the award of compensation by the Tribunal is contrary to the very Act and Rules. Hence, the award deserves to be set aside. He relies upon several judgments, which would be referred to at a later stage. It is also contended that the vehicle in question being a non transport vehicle, no other interpretation can be given to introduce or create non existing liability on the Appellant/insurer. Therefore, he seeks for allowing the appeals absolving them of the liability to pay compensation.

11. As against this, the learned Sr. Counsel Mr. S.P. Shankar arguing for the Respondents/claimants contends as follows:

That the tractor-trailer unit in this case is said to be covered by a Special Package B" Policy with IMT endorsements like 7, 21, 24, 36 and 48: that though fully worded policy was not filed before the Commissioner, before the High Court a copy of such policy is filed only after the directions of this Court; that as per the terms of the fully worded policy. Section 11 so far as the liability to the third parties is relevant: that, the wordings of the policy indicate that the vehicle in question is a goods vehicle, therefore the arguments or the contentions of the Appellant/insurer is barred u/s 92 of the Evidence Act; that the general exception in the said policy does not exclude the liability of the insurer so far as coolies employed for loading and unloading from the insured vehicle, therefore the case of all the coolies in question is covered as they were working as coolies under the owner of the tractor-trailer and they were proceeding to the agricultural land of the owner to attend to agricultural operations.

12. According to him the evidence of R.W.I did not indicate any special reason or terms of the contract, excluding the liability of the insurer, therefore his evidence was nothing but assertion that the policy at Ex.R.2R. 2 did not cover the coolies. According to the Respondent the policy is not in consonance with the endorsements mentioned as Nos. 7, 21, 24, 36 and 48. This is nothing but withholding necessary material information as the said document, was prejudicial to the plea of the Appellant/insurer. He further contends that the decisions relied upon by the learned Counsel for the Appellant, are not applicable to the facts of the present case. The tractor-trailer in question being taken for agricultural work, there was no violation of the terms of the insurance. Therefore the liability of the insurer depends upon the purpose for which the vehicle was used whether for agricultural purpose or for commercial purpose.

13. It is further contended that the definition of tractor-trailer as contemplated under Sections 2(44) and 2(46) of the Act are very relevant. Further, the decisions relied upon by the claimants/Respondents would substantiate the

contentions of the Respondents/claimants. In other words, according to the Respondents, these rules deal with permission to carry an attendant on a trailer for the different purpose other than agriculture. It is further contended that Section 149(4) is also relevant. Ex.P.2P. 2 issued by the Appellants meets the requirements of the M.V. Act of 1988 and the said requirements are set out in Section 147, especially 147(2)(a) as a matter of fact mandates the liability of the insurer. Further. Sections 149(2) and 149(7) are relevant while considering the liability u/s 147(2) of the Act. According to the learned Counsel, the intention of makers of the Legislation has to be considered and the relevant material at the time of redrafting of Section 147 as per the report, finds place at para- 3.16 is very important. According to him reading of said para of the draft would indicate that the insurer should cover compulsorily all the risks arising out of the use of the motor vehicle and that the liability of the insurer is coextensive with that of the insured subject to Section 147(1)(b). It is clear from the proviso to Section 147(1)(b) that coolies being employees carried in a goods vehicle are compulsorily covered. He also refers to Sections 159 and 164 providing for framing of the Rules. The rules relied upon by the insurer are wholly out of place to the main purpose of chapter X & XI. According to Rule 100 of K.M.V. Rules would only provide immunity against the offence of carrying passengers in goods vehicle and does not authorize or permit the insurer to avoid the liability. With these averments, he sought for dismissal of the appeals.

14. The point that, would arise for our consideration is "whether the appeals deserve to be allowed"?

15. Ex.R.2R. 2 is the policy marked before the Court below and Ex.R-7A is the Registration Certificate pertaining to the vehicle in question. The seating capacity of this vehicle is shown as "1". This pertains to KA-24-T-2863 (tractor). So far as Ex.P.7P. 7B it pertains to trailer. As per this document, there is no seating capacity in the said trailer. The contention of the learned Counsel for the Appellant is to the effect that in the absence of any seating arrangement for anyone including the coolies, the presumption is that the workmen or coolies are not covered under the policy in question at Ex.R.2R. 2. It is his case that the insurer did not cover the workman because there is no seating capacity. On the other hand Rules 100 Rules 100(6) and 226 of the Karnataka Motor Vehicles Rules read as under:

Rule-100(6): No person other than an attendant or attendants required by Rule 226 shall be carried on a Trailer which is a goods vehicle.

"Rule 226: Attendants on trailers: (1) Where a trailer is or being drawn by a motor vehicle, there shall be carriage in the trailer or trailers or on the drawing motor vehicle, as the case may be, the following persons, not being less than twenty years of age and competent to discharge their duties, that is to say. -

(a) if the brakes of the trailer cannot be operated by the driver of the drawing motor vehicle or by some other person carried on that vehicle,-

- (i) one person on every trailer competent to apply the brakes; and
- (ii) one person placed at or near the rear of the last trailer in train in such a position as to be able to have a clear view of the road in rear of the trailer to signal to the drivers of overtaking vehicles and to communicate with the driver drawing motor vehicle;
- (b) if the brakes of the trailer can be operated by the driver of the motor vehicle or by some person carried on that vehicle such other person in addition to the driver shall be carried on that vehicle and one person on the last trailer in train in accordance with the provisions of Sub-clause (ii) of Clause (a);
- (c) If the trailer is or trailers are being drawn by tractor the un-laden weight of which exceeds 7.250 Kilograms, notwithstanding that the brakes of the trailer or trailers can be operated by the driver or some other person on the tractor not less than one person on each trailer and not less than two persons on the last trailer in train one of whom shall be the person required by the provisions of Sub-clause (ii) of Clause (a).

(2) This rule shall not apply,-

(emphasis supplied)

- (a) to any trailer having not more than two wheels and not exceeding 771 kilograms in weight laden when used singly and not in a train with other trailers;
- (b) to the trailing half of an articulated vehicle;
- (c) to any trailer used solely for carrying water for the purpose of the drawing vehicle when used singly and not in a train with other trailers;
- (d) to any agricultural or road-making or road repairing or road-cleaning implement drawn by a motor vehicle; or

(emphasis supplied)

(e) to any closed trailer specially constructed for any purpose and specially exempted from any or all of the provisions of this Rule by an Order in writing made by the Registering Authority, to the extent so exempted.

16. Reading of the Rules referred to above, an attendant is required to be carried on in a trailer for different purpose other than agricultural purpose i.e., for the application of break to signal to the drivers of overtaking vehicles, if the trailer is the last one in the train of trailers. He is permitted to be carried as per Rule 226(1) of the Rules. Rule 226(2) is an exception to Rule 226(1). In other words, the reading of Rule 100(6) along with Rule 226(d) carrying an attendant for the purpose of application of breaks of the trailer is necessary in vehicles other than the agricultural trailer (to be attached to tractor) and other vehicles shown in Rule 226(2). Certainly tractor-trailer used for agricultural purpose are not the ones referred to under Rule 226(1). Therefore the contention of the learned Counsel for the Appellant that. Rule 100(6) read with Rule 226 of the Rules are

applicable to the facts of the present case, falls to ground.

17. To understand the controversy one has to see what exactly is the definition of tractor-trailer. The tractor" is defined at Section 2(44) which means "a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road roller".

18. Section 2(46) refers to a trailer" which means "any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle".

19. Motor vehicle is defined at Sub-section (28) of Section 2 of the Act as under:

"Motor Vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any, other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimeters.

20. Sub-section (13) of Section 2 deals with the "goods" and Sub-section (14) of Section 2 of the Act deals with the "goods carriage" which read as under:

2(13) "Goods" includes livestock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle."

2(14) "goods carriage" means any motor vehicle constructed or adopted for use solely for the carriage of goods, or any motor vehicle not so constructed or adopted when used for the carriage of goods.

The learned Counsel for the Appellant places reliance on the following cases:

21. New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, :

This was a case under 1939 of the Motor Vehicles Act with reference to Section 95 of the Motor Vehicles Act. The question before their Lordships was when an Act policy was taken what would be the extent of liability of the insurance company? The question was whether the insurance company would be liable to the extent limited u/s 95(2) of the Act where the premium for payment of compensation to a third party was not taken for unlimited or higher liability. It was held that the liability of the insurance company is limited u/s 95(2) of the Act policy, if basic premium is paid and it was always open to the insured to make payment of additional premium and get higher risk cover in respect of third party.

So far as the facts of the above case, the pillion rider on a two wheeler died when the scooter collided with a truck. The truck was comprehensively insured but no additional or higher premium was paid to cover the unlimited or higher

liability of a third party. Therefore, it was held that Rs. 50.000/- alone was the limit of liability as per the statute though the policy was a comprehensive policy and the insurance company/insurer was not liable to pay unlimited compensation to the third party.

22. The next decision relied upon by the learned Counsel for the Appellant is Ramashray Singh Vs. New India Assurance Co. Ltd. and Others, .

In this case, their Lordships of the Apex Court while dealing with the limits of liability of the Insurance Company so far as third party risk was concerned, made specific emphasis with Clauses (I) and (ii) of Sub-section (b) to Section 147(1).

The facts in the above case are as under:

One Shashi Bhushan Singh was employed as a "Khalasi" - cleaner of the vehicle. On 21.10.1998, the vehicle met with an accident and said Khalasi - Shashi Bhushan Singh died. The Workmen's Compensation Court awarded compensation on the ground that the vehicle in question was comprehensively insured with the insurer and the accident occurred during the course of and arising out of employment. Aggrieved by this, the insurer went before the High Court of Patna and the High Court allowed the writ petition holding that in the absence of any special contract between the Appellant and the Respondent, the rights of the parties were governed by statute which did not require the Respondent to cover liability in respect of an accident of a Khalasi. This order of the High Court was taken before the Apex Court contending that the High Court has misconstrued the provisions of the Act, in particular Clause (b) of Sub-section (I) of Section 147. In that context, their Lordships at para-10, 13 and 15 proceeded to hold as under:

10. The Appellants first submission was that Shashi Bhushan Singh was a passenger. The Appellant's submission 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, is correct. (See New India Assurance Company Vs. Shri Satpal Singh and Others, . However, the proviso to the Sub-section carves out an exception in respect of one class 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. As stated earlier, this would still allow the insured to enter into an agreement to cover other employees, but under the proviso to Section 147(1)(b), it is clear that for the purposes of Section 146(1), a policy shall not be required to cover liability in respect of the death arising out of and in the course of any employment of the person insured unless; first; the liability of the insured arises under the Workmen's Compensation Act, 1923 and secondly if the employee is engaged in driving the vehicle and if it is a public service vehicle, is engaged as conductor of the vehicle or in examining tickets on the vehicle. If the concerned employee is neither a driver nor conductor nor examiner of tickets, the insured cannot claim that the employee would come under the description of "any

person" or "passenger". If this was permissible, then there would be no need to make special provisions for employees of the insured. 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. Besides the claim of the deceased employee was adjudicated upon by the Workmen's Compensation Court which could have assumed jurisdiction and passed an order directing compensation only on the basis that the deceased was an employee. This order cannot be enforced on the basis that the deceased was a passenger.

13. The Appellant's next submission was that the concerned employee was a "conductor". It is doubtful whether a Khalasi" and a conductor are the same. But assuming this were so, there is nothing to show that the Appellant had paid any additional premium to cover the risk of injury to a conductor. On the contrary, the policy shows that premium was paid for 13 passengers and 1 driver. There is no payment of premium for a conductor.

15. Consequently, although the Appellant's claim under the insurance policy arose under the Workmen's Compensation Act, since the concerned employee was not engaged in the capacity of a driver in respect of whom alone premium was paid apart from the passengers, his claim is unsustainable.

23. The learned Counsel for the Appellant also brought to our notice another decision of the Apex Court in the case of National Insurance Co. Ltd. Vs. V. Chinnamma and Others, (Three Judges Bench).

This was a case where one Gopal was carrying the business of vegetables. In this case the legal representatives of the deceased V. Gopal filed a claim petition. The deceased had purchased five bags of vegetables and loaded the same in a trailer of a tractor and was also travelling along with the vehicle. As a result of rash and negligent driving of the driver of the tractor the accident occurred when the driver noticed a bus from the opposite direction took the bus to the left side of the road margin and due to heavy jerks, the deceased fell down and sustained injuries resulting in his death in the hospital. Their Lordships of the Apex Court in this case held tractor was not a goods carriage and in this case, the accident had occurred prior to the amendment by Act 54 of 1994. Therefore, their Lordships at paras-9, 16 and 17 held that the case was covered under the old Act and therefore, the insurer was not liable to pay the compensation.

24. The learned Counsel also brought to our notice another reported case in The Oriental Insurance Company Ltd. v. Brij Mohan 2007 AIR SCW 3734 .

In the said case, only tractor was insured and not the trolley. The insured Respondent - a labourer slipped down from the trolley attached to a tractor. The tractor was insured only for carrying out the agricultural work but at the relevant point of time, the tractor and the trolley were sent for the purpose of digging of earth and taking it in a trolley to brick-kiln. Therefore, it was held that the labourer was mere passenger and not owner or driver and his claim petition could not have been allowed. However their Lordships ultimately considering that

he was a poor labourer who had become disabled directed the insurer to satisfy the award with a right to realise the same from the owner of the tractor and trolley.

25. The learned Counsel brought to our notice yet another judgment in the case of *United India Insurance Company Ltd. v. Serjerao* 2007 AIR SCW 7280. The insured claimants were travelling in a trolley attached to the tractor as labourers. Apparently the claimants were not the employees of the insured. Their Lordships ultimately held that the insurance company was not liable.

26. The learned Counsel for the Respondents-claimants relied upon the following citations:

i) *Natwar Parikh & Company Ltd. v. State of Karnataka* reported in *Accidents Claims Journal* 2006 Volume I](3 Judges):

This is a case arising under the Karnataka Motor Vehicles Taxation Act 1957 with reference to permit. The question that arose before the Their Lordships was whether the tractor-trailer when combined would constitute a "goods carriage" and necessitate a permit for its use on roads. Their Lordships held that it constitutes a goods carriage and State was empowered to levy tax on all motor vehicles which are designed and manufactured for use on roads. The relevant para-24 reads as under:

24. Section 2(28) is a comprehensive definition of the words "motor vehicle". Although, a "Trailer" is separately defined u/s 2(46) to mean any vehicle drawn or intended to be drawn by motor vehicle, it is still included into the definition of the words "motor vehicle" u/s 2(28). Similarly, the word "tractor" is defined in Section 2(44) to mean a motor vehicle which not by itself constructed to carry any load. Therefore, the words "motor vehicle" have been defined in the comprehensive sense by the legislature. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles, etc. Thus, a combined reading of afore stated definition u/s 2, reproduced hereinabove, shows that the definition "motor vehicle" includes any mechanical propelled vehicle adopted for use upon road irrespective of the source of power and includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor trailer would constitute a "goods carriage" u/s 2(14) and, consequently, "transport vehicle" u/s 2(47). The test to be applied in such a case whether the vehicle is proposed to be used for transporting goods from one place to another. When a vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adopted for the carriage of goods. Applying the above test, we are of the view that the tractor-trailer in the present case falls u/s 2(14) as a "goods carriage" and consequently, it falls under the definition of "transport vehicle" u/s 2(47) of the Motor Vehicles Act. 1988.

ii) *The Oriental Insurance Company Ltd. v. D. Laxman and Ors.* ILR 2006 KAR

This was a case where a tractor-trailer was involved in the accident. In this case, the deceased and the injured persons were the employees of one D. Laxman, who was the owner of the tractor-trailer. The tractor alone was insured and the trailer was not insured. Therefore, their Lordships held that both tractor and trailer required registration separately and were required to be insured separately. Therefore, the coolies carried in a trailer were not covered by the policy and hence no compensation came to be paid.

iii) Oriental Insurance Co. Ltd. Vs. Hanumantappa and others,

In this case it was held that the trailer was constructed for the purpose of carriage of goods. Therefore, when it was pulled by a tractor, both together constitute transport vehicle viz., goods vehicle and ultimately held that the insurance company which had insured both the vehicles was liable to pay the compensation in respect of death and also injuries to the employees travelling in the tractor but however, the liability was restricted to an extent of liability under the provisions of the Workmen's Compensation Act unless an extra coverage was taken by paying extra premium.

iv) Smt. Bhimavva and Others Vs. Shankar @ Adya and Others,

In this case also, the employees of one Pampanagouda were travelling in tractor-trolley, which was driven by one driver by name Shankar. The tractor-trolley turned turtle resulting in the death of one coolie and injuries to other coolies. Ultimately, their Lordships held that even without an adjudication under the Workmen's Compensation Act, the company was liable to pay the compensation limited to the amount payable under the Workmen's Compensation Act. According to Their Lordships, by reading of Sections 146 and 147 which appear in Chapter XI of the Act makes it amply clear that the existence of a policy of insurance that satisfies the basic minimum prescribed u/s 147 of the Act is absolutely essential for the use of any motor vehicle in a public place. It was further held that it is always open to the owner of a vehicle to secure a policy of assurance providing coverage wider than the one envisaged by Section 147. If such wider coverage is taken, the liability will be governed by the terms of the policy if it goes beyond the limit of the liability u/s 147 of the Act. In the said case, there was no wider cover obtained by the insured/owner for the vehicle. Ultimately it was held that the insurer was liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover even in the proceedings under the Motor Vehicles Act without such liability being determined under the Workmen's Compensation Act.

v) Oriental Insurance Company Limited Vs. Thippeswamy,

In this case, the tractor-trailer used for transporting material for constructing a farmhouse is for agricultural purpose. The tractor-trailer met with an accident in the above case. As a result of the same two labourers sustained injuries. The

insurance company disputed its liability on the ground that the vehicle was not used for the purpose for which it was insured. His Lordship held that the farmhouse is used for keeping agricultural implements, etc. Therefore, it is part and parcel of the agricultural operations when the vehicle was used for agricultural purpose and held that when the vehicle was used for agricultural purpose, the company is liable.

vi) In unreported decision in MFA No. 6357 c/w 6358/2001 etc., disposed of on 24th March, 2006 their Lordships held as under:

It was a case where the claimants were travelling in the tractor-trailer and the insurer denied the liability on the ground that the vehicle in which the claimants were travelling on the date of accident was neither a goods vehicle nor they were owners of the goods alleged to have been taken along with them at the time of the accident. After referring to several cases. Their Lordships held that the definition of tractor and trailer together would constitute a goods carriage vehicle as contemplated u/s 2(14) and especially when it is used for transporting the goods from one place to another. Ultimately it was held that the insurer was liable to pay the compensation.

vii) New India Assurance Company Ltd v. Sri Rajkumar 2009 Kar. M.A.C 66

In this case a trailer attached to a tractor was held to be a goods carriage and when the claimants were travelling in a trailer attached to the tractor carrying for the purpose of transporting the manure for agricultural purpose, the insurer was held liable to pay the compensation.

viii) The Apex Court in Skandia Insurance Company Ltd. v. Kokilaben Chandravadan AIR 1987 SC 1184 has observed as hereunder:

14. Section 96(2)(b)(ii) extends immunity to the Insurance Company if a breach is committed of the condition excluding driver by a named person or persons or by any person who is not fully licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification. The expression breach" is of great significance. The dictionary meaning of breach" is "infringement or violation of a promise or obligation" (see Collins English Dictionary). It is therefore abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is not (sic) duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression breach" carries within itself induces an inference that the violation or infringement on the part of the promisor must be a wilful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is guilty" of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the Insurance Company

that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise. Not when some mishap occurs by some mischance. When the insured has done everything within his power inasmuch as he has engaged a licensed driver and has placed the vehicle in charge of a licensed driver with the express or implied mandate to drive himself it cannot be said that the insurer is guilty of any breach. And it is only in case of a breach or a violation of the promise on the part of the insured that the insurer can hide under the umbrella of the exclusion clause. In a way the question is as to whether the promise made by the insured is an absolute promise or whether he is exculpated on the basis of some legal doctrine. In the present case even if the promise were to be treated as an absolute promise, the grounds for exculpation can be found from Section 84.

By reading Section 84, apart from the implied mandate to the licensed driver not to place an unlicensed person in charge of the vehicle. There is also a statutory obligation on the said person not to leave the vehicle unattended and not to place it in charge of an unlicensed driver. What is prohibited by law must be treated as a mandate to the employee and should be considered sufficient in the eye of law for excusing non-compliance with the conditions. It cannot therefore in any case be considered as a breach on the part of the insured. To construe the provision differently would be to re-write the provision by engrafting a rider to the effect that in the event of the motor vehicle happening to be driven by an unlicensed person regardless of the circumstances in which such a contingency occurs, the insured will not be liable under the contract of insurance. It needs to be emphasised that it is not the contract of insurance which is being interpreted. It is the statutory provision defining the conditions of exemption which is being interpreted. These must therefore be interpreted in the spirit in which the same have been enacted accompanied by an anxiety to ensure that the protection is not nullified by the backward looking interpretation which serves to defeat the provision rather than to fulfil its life-aim. To do otherwise would amount to nullifying the benevolent provision by reading it with a non-benevolent eye and with a mind not tuned to the purpose and philosophy of the legislation without being informed of the true goals sought to be achieved. What the legislature has given, the Court cannot deprive of by way of an exercise in interpretation when the view which renders the provision potent is equally plausible as the one which renders the provision impotent. In fact it appears that the former view is more plausible apart from the fact that it is more desirable. When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependents on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is

hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obedience to, the doctrine of reading down" the exclusion clause in the light of the main purpose" of the provision so that the exclusion clause" does not cross swords with the main purpose" highlighted earlier. The effort, must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose. This theory which needs no support is supported by Carter's "Breach of Contract" Vide paragraph 251. To quote:

Notwithstanding the general ability of contracting parties to agree to exclusion clause which operate to define obligations there exists a rule, usually referred to as the "main purpose rule", which may limit the application of wide exclusion clauses defining a promisor's contractual obligations. For example, in *Glynn v. Margetson & Co.* (1893) A.C. 351 at 357 Lord Halsbury L.C. stated: "It seems to me that in construing this document, which is a contract of carriage between the parties, one must be in the first instance look at the whole instrument and not at one part of it only. Looking at the whole instrument, and seeing what one must regard as its main purpose, one must reject words, indeed whole provisions, if they are inconsistent with what one assumes to be the main purpose of the contract.

Although this rule played a role in the development of the doctrine of fundamental breach, the continued validity of the rule was acknowledged when the doctrine was rejected by the House, of Lords in *Suisse Atlantique Societied" Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Centrale* (1967) 1 A.C. 361 at 393.412-413, 427-428, 430. Accordingly, wide exclusion clauses will be read down to the extent to which they are inconsistent with the main purpose, or object of the contract,

(Exphasis added).

15. In our opinion, therefore, the High Courts of Gujarat and Andhra Pradesh are right and the High Courts of Orissa, Patna and Madhya Pradesh are in error. The exclusion clause does not exonerate the Insurer.

ix) In *Guru Govekar Vs. Miss Filomena F. Lobo and Others*, at paras 13 & 14, the Apex Court has observed as under:

13. We may now refer to the decision of this Court in the *New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others*, . In that case the owner of a motor car had insured it with the Appellant, insurance company, under a comprehensive policy. He had permitted another person, who had insured his own car with another company, to drive it and while the other person was driving the car it met with an accident. As a result of the accident one person died and another person sustained injuries. Both of them were in the car. The heirs of the man who died and the Person who sustained injuries filed suits for damages. This Court held that on a consideration of the provisions of Sections 93 to 96 of the Act the insurer was liable to indemnify the person or class of persons specified in

the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons. If the policy covers the insurer for his liability to the third party, the insurer was bound to indemnify the person or classes of person specified in the policy. The same was the effect of Sub-section (1) of Section 96 of the Act which provided that the insurer was bound to pay to the person entitled to the benefit of a decree he had obtained in respect of any liability covered by the terms of the policy against any person irrespective of the fact that the insurer was entitled to avoid or cancel the policy. This meant that once the insurer had issued a certificate of insurance in accordance with Sub-section (4) of Section 95 of the Act the insurer had to satisfy any decree which a person receiving injuries from the use of the vehicle insured had obtained against any person insured by the policy. He was liable to satisfy the decree when he had been served with a notice under Sub-section (2) of Section 96 of the Act about the proceedings in which the judgment was delivered.

14. Thus on the facts of the case before us we are of the view that the insurer is liable to pay the compensation found to be due to the claimant as a consequence of the injuries suffered by her in a public place on account of the car colliding with her on account of the negligence of the mechanic who had been engaged by the repairer who had undertaken to repair the vehicle by virtue of the provisions contained in Section 94 of the Act which provides that no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be a policy of insurance complying with the requirements of Chapter VIII of the Act. Any other view will expose innocent third parties to go without compensation when they suffer injury on account of such motor accidents and will defeat the very object of introducing "the necessity for taking out insurance policy under the Act.

27. After referring to several judgments relied upon by both the parties as stated above, it is relevant to refer to Section 147 of the Motor Vehicles Act which reads as under:

147. Requirements of policies and limits of liability:

(I) 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 person 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 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;

(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 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 arising 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.

28. Section 149 is also relevant which reads as under:

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-

(1) If, after a certificate of insurance has been issued under Sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147 (being a liability covered by the terms of the policy [or under the provisions of Section 163-A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this Section, pay to the person entitled to the benefit of the decree any such sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

29. Under Sub-section (1) of Section 149, an insurer who can avoid or can be successful in avoiding or cancelling the policy is still bound to satisfy the award as contemplated under Sub-section (1) of Section 149 of the Act.

30. Sub-section (4) of Section 149 of the Act indicates that the insurer cannot

exclude any liability by adding any term in the policy format which is prescribed by the statute. If the insurer intends to avoid the liability, it can be done only in the manner provided under Sub-section (2) of Section 149 or Sub-section (7) of Section 149 of the Act. As a matter of fact, the report of the Law Commission of India in Volume 13 of the report at Chapter III at para 3.16, refers to the requirements of insurance policy covering the risks of the persons.

3.16 As already discussed, the statute had originally provided several limitations on the scope of the compulsory insurance cover. Fortunately all those limitations have since been removed and it is now provided that, in the case of death or injury to any person, the insurance should cover the entire extent of actual liability (Section 147(2)(a)). However, in respect of damage to, or loss of, property, the compulsory insurance cover is limited to Rs. 6000/- u/s 147(2)(b).

31. By reading Sections 147 and 149, it is clear that (the legislative intent was that the insurer has to compulsorily cover all the risks arising out of and use of motor vehicle and the liability of the insurer is co-extensive with that of insured. However, this is subject to the limitations envisaged u/s 147(1)(b). It is also clear that the coolies who are employees carried in a goods vehicle are to be compulsorily covered u/s 147(1)(b).

32. As per Sub-section (4) of Section 41 of the M.V. Act, 1988, the types of motor vehicles at a glance vide SO 1248 (E) dated 5.11.2004, the Central Govt. has specified the types of motor vehicles as mentioned in col. Nos. 1 & 2 below for the purpose of said Sub-section (4).

TABLE

Transport Vehicle Non-Transport Vehicle

- (i) (i)
- (ii) (ii)
- (iii) (iii)
- (iv) (iv)
- (v) (v)
- (vi) (vi)
- (vii) Power tiller and Tractors using public roads. (vii)
- (viii) (viii)
- (ix) (ix) Agricultural Tractor and Power Tiller.
- (x) (x)
- (xi) (xi)
- (xii) (xii)

(xiii) (xiii)

(xiv) (xiv)

(xv)

(xvi)

(xvii)

(xviii)

(xix)

(xx)

(xxi)

Power tiller and tractor is mentioned at col. No. (vii) which is described as a transport vehicle. So far as agricultural tractor and power tiller, it is mentioned as non-transport vehicle. As per this Section 41(4), every Certificate of Registration has to specify the types of motor vehicle as mentioned in Columns 1 and 2 of the table as the Central Government may declare depending upon the nature of the design, construction and use of the vehicle specified. According to the learned Counsel for the Appellant, the tractor is a non-transport vehicle though trailer is considered as a transport vehicle.

33. As per the table agricultural tractor and power tiller are shown in the non-transport classification, but power tiller and tractors using public roads are shown as transport vehicle. The tractor-tiller is a non-transporting vehicle but when used on roads, is considered as a transport vehicle from the gist of the judgments referred to above. It is crystal clear when the tractor-trailer combined would constitute a goods carriage, therefore permits are necessary for its use on the roads. Under Motor Vehicles Act, by Sections 2(44) and 2(46) the definitions of tractor-trailer would definitely indicate when the trailer drawn or intended to be drawn by a motor vehicle, it becomes a goods vehicle.

34. As of now, there are only two types of policies envisaged under the Standard Forms as contemplated u/s 6 of the Indian Motor Tariff. Their liability under the liability only policy and package policy reads as under:

(i) Liability Only Policy: This cover Third Party Liability for bodily injury and/or death and Property Damage Personal Accident cover for Owner Driver is also included.

(ii) Package Policy: This covers loss or damage to the vehicle insured in addition to (i) above.

35. By reading the above two types of policies, it is clear package policy is nothing short of comprehensive policy with all the contents almost similar to the comprehensive policy which was in vogue earlier to the introduction of this

package policy.

36. The fully worded policy now produced refers to limits of liability as envisaged in Commercial Vehicles "B" Policy (Misc. & special type of vehicles). Section 1 refers to loss of damage to the insured vehicle, tractor-trailer combination; Section-II refers to liability to third parties and Section-III refers to towing disabled vehicle. We are concerned with Sub-section (i) of Section II which reads as under:

Subject to the limits of liability as laid down in the schedule herein, the company will indemnify the insured against all sums including the claimants costs and expenses which the insured shall become legally liable to pay in respect of death of or bodily injury to any person (including the loading and/or unloading) of the Motor vehicle.

37. The wordings of the fully worded policy makes it clear that the vehicle in question is a goods vehicle. Therefore, the Respondents were justified in saying Appellant cannot plead other than what is stated in the policy. If the general exception in the policy were to exclude the liability of the insurer to cover the coolies employed for loading and unloading then the argument of the Appellants was justified. Though the fully worded policy refers to the terms of contract between the parties, IMT 7, 21, 24, 36 and 48, on perusal of the same except IMT 36 none of the other IM Ts, are relevant. As a matter of fact IMT 7 & 48 do not find a place in the fully worded policy. IMT 21 refers to exclusion of riots, strikes and terrorism coverage. IMT 24 refers to replacement of parts. When the very policy is referred to as a special package policy, unless the insured was fully made known the exact terms of contract by including them in the terms of policy, it is nothing but withholding necessary and important information from the insured. Depending upon the user of the vehicle whether for agricultural purpose or for commercial purpose, the liability of the insurer would be decided. When the intention of the Legislation was to cover compulsorily all the risk arising out of the use of the motor vehicle and that the liability of the insurer is co-extensive with that of the insured subject to Section 147(1)(b), coolies or employees are compulsorily covered. Therefore, the argument that Rule 100(6) r/w Rule 226 of the Karnataka Motor Vehicles Rules is relevant is rejected and the same will not authorise or permit the insurer to avoid the liability.

38. In the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, the Larger Bench of the Apex Court has held as under:

102. The summary of our findings to the various issues as raised in these petitions are as follows:

(i) Chapter XI of the Motor Vehicles Act. 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to

effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed u/s 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2) (a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver or invalid having licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured u/s 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learners licence, the insurance companies would be liable to satisfy the decree.

(ix) The claims tribunal constituted u/s 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In

the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between Insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of" claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner u/s 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in Sub-section (4) with proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

39. Under General exceptions of this fully worded policy, there is no avoidance of liability. General exceptions mentioned therein do not indicate any exclusion of liability. The judgments relied upon by the learned Counsel for the Appellant so far as Brij Mohan, it was a case where the tractor alone was insured for carrying on agricultural work but the trolley was engaged in carrying labourers to brick kiln (commercial purpose). Therefore, their Lordships held that the purpose for which the vehicle was used was not for agriculture and added to this the vehicle in which they were travelling was not insured. Hence, the insurer was held not liable The decision in Serjerao's case again refers to Brij Mohan's case. In this case only trolley was involved and not the tractor.

40. The combination of tractor-trailer is nothing short of a goods carriage. Therefore, when once it is held as goods carriage vehicle, by virtue of Section - II-1(1) of fully worded policy and also provisions of Section 147, the claim of the claimants on hand is covered. The claimants in the present case have rightly

approached the Workmen's Commissioner and the Commissioner was justified in holding that the injured claimants were coolies under the owner viz., the insured. In the present case, they were carrying stones for constructing a ridge in the land belonging to the insured so as to store the water. This is nothing but part and parcel of agricultural operations. The Claimants were neither gratuitous passengers nor persons who were travelling in the tractor-trailer for the purpose other than agricultural operations. Looking to the avocation of the claimants, the computation of the compensation by the Commissioner is just and proper. Viewed from any angle, we do not find any good ground to interfere with the awards of the Commissioner. Therefore the claimants in the present case were rightly held as covered under Ex.R-2 policy.

41. Accordingly, the appeals are dismissed.