
(2015) 06 AP CK 0081
In the Andhra Pradesh High Court
Case No : C.M.A. No. 126 of 2008

National Insurance Company Limited	Vs	APPELLANT
T. Sabitha and Others		RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 145, 146, 146(1), 147, 147
Workmens Compensation Act, 1923 — Section 30

Citation : (2016) 1 ACC 689 : (2016) 1 ALD 656 : (2015) 6 ALT 543

Hon'ble Judges : M. Seetharama Murti, J

Bench : Single Bench

Advocate : Naresh Byrapaneni, for the Appellant; D. Ram Gopal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M. Seetharama Murti, J—This appeal under Section 30 of the Workmen's Compensation Act, 1923 (presently known as Employees Compensation Act), ("the Act", for brevity) by the unsuccessful 3rd opposite party is directed against the order dated 30.12.2007 in W.C. No. 12 of 2006 passed by the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Ranga Reddy District (Circle-II), Hyderabad.

2. I have heard the submissions of the learned counsel for the appellant/3rd Opposite Party ("the 3rd opposite party", for brevity). There is no representation for the respondents/applicants 1 to 3 ("the applicants", for brevity). I have perused the material record.

3. The introductory facts, which are necessary for consideration, in brief, are as follows:

The 1st applicant, who is the wife of the deceased-Ajay Kumar and the applicants 2 and 3, who are their daughters had together filed the claim petition before the learned Commissioner claiming a compensation of Rs. 4,00,000/- under the

provisions of the Workmen's Compensation Act for the untimely death of the said deceased due to his involvement in a motor vehicle accident that had occurred out of and during the course of his employment as driver on the Allwyn Nissan Mini lorry bearing Registration No. AP 13W 7946 of the 1st opposite party, which was insured with the 3rd opposite party. In the claim petition, the case of the applicants is that while the deceased was driving the said Mini lorry, the said lorry dashed against a cyclist at Nayakal village, Kalluru Mandal and that as a result, the cyclist succumbed to the injuries on the spot and that thereafter, the deceased proceeded on his lorry at a high speed to escape from the scene of accident and had dashed his lorry against another lorry bearing No. AP 12T 2626 coming from the opposite direction and that in the accident, he had sustained injuries and succumbed to the same on the spot and thus at the relevant time, the deceased was the driver on the aforementioned lorry of the 1st opposite party and that he was drawing a wage of Rs. 4,000/- per month and that the 1st opposite party had purchased the lorry from the 2nd opposite party just before the accident and running it as its owner from the time of the said purchase, though the transfer of the vehicle was not affected in the official records of the transport authority. The 1st respondent had filed a counter admitting that he is the owner of the vehicle having purchased the same from the 2nd opposite party on 24.11.2004 under the agreement of sale executed on a Rs. 50/- non-judicial paper. He had further admitted in his counter that his mini lorry was involved in the accident on 05.08.2006 at 9.30 hours and that at that time, the deceased was the driver on the said vehicle and that the deceased was drawing Rs. 4,000/- per month as wage besides Rs. 100/- per day as batta at the relevant time and that the deceased was working under him since four years prior to the accident. He had further stated that the said mini lorry was insured with the 3rd respondent/insurance Company and that the insurance policy was in force and had prayed for directing the 3rd opposite party to pay the compensation. The 2nd opposite party had remained ex parte before the learned Commissioner. The 3rd respondent had filed a counter resisting the claim on various grounds. At trial, the 1st applicant, who is the wife of the deceased, was examined as PW 1 and exhibits A1 to A5 were marked. The 1st opposite party was examined as RW 1 and an officer of the 3rd opposite party was examined as RW 2. Exhibit B1, the copy of the agreement of sale of the vehicle was exhibited through RW 1. Exhibit B2, the policy of insurance was marked on the side of the 3rd opposite party. On merits, the learned Commissioner had awarded a compensation of Rs. 4,12,724/- recoverable from opposite parties 1 and 3 and directed that the same may be deposited by way of demand draft drawn in favour of the Commissioner for Workmen's Compensation & Deputy Commissioner of Labour, Ranga Reddy within 30 days from the date of receipt of a copy of the said order. Aggrieved of the said orders, the 3rd opposite party had preferred this appeal.

4. The learned counsel for the 3rd opposite party had contended as follows:

The learned Commissioner was not correct in fastening the liability on the 3rd opposite party-insurer when no premium is paid covering the risk of the

deceased, who was the driver on the mini lorry as per the pleaded case of the applicants. The learned Commissioner had erroneously considered the evidence. The learned commissioner had erroneously held that the deceased was the driver of the said lorry when no driving licence of the deceased was produced and exhibited. The learned Commissioner had erred in not looking into the provisions of Section 2(dd) of the Act and Sections 2(9) and 2(10) of the Motor Vehicles Act, 1988 (the "MV Act", for short). The learned Commissioner was incorrect in treating the deceased as a driver and in making the 3rd opposite party liable to pay the compensation. The learned Commissioner ought to have seen that the specific case of the applicants is that the deceased was employed under the 1st opposite party, who is not the registered owner of the vehicle and therefore, the learned Commissioner ought to have held that there is no employee and employer relationship between the deceased and the 2nd opposite party/insured who was the registered owner of the vehicle. The learned Commissioner ought to have dismissed the claim against the third opposite party as the third opposite party cannot be made liable in a case where the applicant (deceased) cannot be treated as an employee of the Insured within the provisions of the Act. The learned Commissioner had erred in saddling the 3rd opposite party with the liability when no premium to cover the risk of the deceased driver was collected under exhibit B2-insurance policy and when the said policy did not cover the risk of the applicant and the liability of the 3rd opposite party. The learned Commissioner had grossly erred in accepting the age of the deceased as 31 years when PW 1 had admitted that the age of the deceased was 39 years.

4.1 He had further contended that the insured and the applicants cannot claim that the driver/deceased comes under the description "any person" or "passenger"; the policy does not cover the risk of any workmen; and, therefore, the 3rd opposite party/insurer cannot be fastened with any liability as the 2nd opposite party-insured had not paid any premium to cover the risk of the deceased. In support of the said contentions, he had placed reliance on the following decisions: (i) Ramashray Singh Vs. New India Assurance Co. Ltd. and Others, (2003) 2 ACC 706 : (2003) ACJ 1550 : AIR 2003 SC 2877 : (2003) 116 CompCas 643 : (2003) 3 CTC 380 : (2003) 6 JT 97 : (2003) 3 LLJ 740 : (2003) 135 PLR 796 : (2003) 5 SCALE 377 : (2003) 10 SCC 664 : (2003) 1 SCR 666 Supp : (2003) 2 UJ 1263 , (ii) Dudekula Salabee Vs. R. Siva Sankar Reddy and Another, (2009) ACJ 1053 : (2008) 1 ALD 161 , (iii) New India Assurance Co. Ltd. Vs. Suraya Bee and Others, (2010) ACJ 1145 : (2009) 4 ALT 760 : (2011) 1 TAC 612 , (iv) K. Sarveswara Rao Vs. Kakaraparthi Anjali Devi, Kakaraparthi Parameswaramma and The Oriental Insurance Co. Ltd., (2014) 1 ACC 429 : (2013) 5 ALD 351 and (v) The New India Assurance Co. Ltd. Vs. Lodya Shankar and Others, (2004) 3 ALD 400 : (2004) 102 FLR 8 .

5. In view of the contentions of the 3rd opposite party, the points that arise for determination in this appeal are:

i. Whether the employee-employer relationship between the deceased and the

1st opposite party does not entail the applicants to claim compensation as the 1st opposite party is not the registered owner-cum-insured of the vehicle and as the 2nd opposite party was the registered owner of the vehicle at the relevant time?

ii. Whether the impugned order fastening the liability on the 3rd opposite party/insurer and directing it to pay the compensation to the applicants is unsustainable as no premium was admittedly paid to cover the risk of the deceased/driver?

ii. Whether the learned Commissioner had not properly and correctly appreciated the oral and documentary evidence? And if so, whether the order impugned is liable to be set aside?

6. POINTS:

6.1 The contentions of the 3rd opposite party are already stated supra, in detail. PW 1-the wife of the deceased, who is the 1st applicant, had deposed in line with the pleaded case of the applicants. She had exhibited exhibit A1-the certified copy of the FIR, exhibit A2-the copy of the charge sheet, exhibits A3 and A4-the copies of the inquest and post mortem reports of the deceased and exhibit A5-the agreement of sale of the vehicle where under the 1st opposite party had purchased the vehicle from the 2nd opposite party for consideration. She had admitted in her cross-examination that she did not file the driving licence of the deceased but, had denied the suggestion that the deceased did not possess a driving licence and had further denied the suggestion that the deceased was 36 years of age at the time of the accident. She had also stated that the deceased worked under the 1st opposite party at the relevant time but, not under the 2nd opposite party and had denied the suggestion that the opposite parties 2 and 3 are not liable to pay the compensation. The 1st opposite party who was examined as RW 1 had affirmed in his evidence about the employment of the deceased as driver on his vehicle and about the wages, the manner of accident and the death of the deceased out of and during the course of his employment under him; and, had also stated that he had purchased the vehicle/mini lorry from the 2nd opposite party under an agreement of sale and that the same is given to the advocate and the same is filed into Court and that the said vehicle of which the 2nd opposite party was originally the owner was insured with the 3rd opposite party. He had denied the suggestion that 3rd opposite party is not liable to pay compensation. In his cross-examination, he had admitted that he has not filed the R.C. book of the vehicle or a copy of transfer application, if any filed before the transport authority, for change of the ownership of the vehicle to him from the 2nd opposite party. Per contra, RW2, the officer of the 3rd opposite party had deposed that the insurance policy in respect of the vehicle was taken by the insured/2nd opposite party and that therefore, the same covers the employees of the 2nd opposite party but not the employees of the 1st opposite party and that there is no coverage covering the liability of the employees of the 1st opposite party and that therefore, the company is not liable to pay any

compensation. In his cross-examination, he had admitted that the vehicle was insured with his company and also stated that he has no knowledge of the sale transaction of the vehicle between the opposite parties 1 and 2 and had denied the suggestion that though the policy was taken by the 2nd opposite party, the 3rd opposite party is liable to pay the compensation as the vehicle was transferred by the 2nd opposite party to the 1st opposite party. As rightly contended by the learned counsel for the applicants, the 1st applicant is an illiterate lady and the other applicants are her minor daughters and therefore, it is not possible for them to produce the licence which the deceased held and was carrying on at the time of the accident, and which might have been lost at the place of the accident. On a mere non-filing of the driving licence of the deceased, an inference cannot be drawn that he did not possess a valid driving licence in the light of the evidence of RW 1 that the deceased was working under him as driver on his vehicle since four years prior to the accident and was drawing wages besides daily batta.

6.2 I have thus carefully gone through the evidence brought on record. The evidence on the side of the applicants, which is well corroborated by the contents of exhibits A1 to A4 and the oral evidence of RW 1, is sufficient to come to a safe conclusion that the deceased was employed as a driver on the lorry of the 1st opposite party and that he had succumbed to the injuries, which he had sustained out of and during the course of his employment as driver on the lorry of the 1st opposite party and that therefore, there is no merit in the contentions of the insurance company that the applicants had failed to establish their case.

6.3 Coming next to the contention that the 2nd opposite party is the registered owner and the insured and that the 1st opposite party is neither the registered owner of the vehicle nor was he the insured under the policy, it is to be noted that the evidence brought on record sufficiently established that the 1st opposite party purchased the vehicle under exhibit A5-agreement of sale of vehicle. The copy of the same is also marked as exhibit B1 through RW 1, the 1st opposite party. Though the registration of the vehicle was not transferred pursuant to an application for transfer submitted to the transport authority concerned, the law is well settled that there will be a deemed transfer of the certificate of insurance in favour of the person to whom the motor vehicle is transferred with effect from the date of the transfer of the vehicle. The M.V. Act brought about a drastic change in the situation. Section 157 of the said Act which corresponds to the earlier Section 103-A of the 1939 Act, provides that upon the transfer of ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate "shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer". The explanation to the section makes it clear that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance. The view of this Court finds support from the decision of the Supreme Court in *Mallamma (Dead) by L.Rs. Vs.*

National Insurance Company Ltd. and Others, (2014) 2 ACC 268 : (2014) ACJ 1266 : (2014) 5 JT 47 : (2014) 3 LLJ 622 : (2014) 4 SCALE 627 . The facts, relevant findings and the ratio in the precedent are as under:

"On 3rd April, 1997 at about 1.00 p.m., when Honniah @ Dodda Thimmaiah was returning from the field driving a tractor with the sand load on the trailer, the tractor overturned and Honnaih @ Dodda Thimmaiah died owing to the injuries sustained in the accident. The tractor involved in the accident was originally registered in the name of one Gangadhara (Respondent No. 3) and the same was insured with the Respondent No. 1 while the deceased was employed as a driver with the Respondent No. 2-Jeeva Rathna Setty.

On 4th September, 1997, the appellants/legal representatives of the deceased, filed an application before the Commissioner for Workman's Compensation, Chickmagalur claiming compensation under the Workmen's Compensation Act.

The officer of the National Insurance Company (Respondent No. 1) deposed before the Commissioner that as per its records on the date of accident, the vehicle was no doubt under the insurance policy but in the name of Gangadhara, not in the name of Jeeva Ratna Setty, hence there is no relation of employee-employer between the deceased and Gangadhara and therefore, it has no burden of liability to pay compensation to the claimants.

The learned Commissioner having held in favour of the applicants/appellants awarded compensation, but the High Court having held in favour of the applicants in all respects had, however, excluded the liability of the Insurance Company on the ground that the contention of deemed transfer of the insurance policy in favour of Jeeva Rathna Setty by virtue of Section 157 of M.V. Act was not actually urged before the Commissioner.

The 4th Respondent had stated that on the date of the accident, this vehicle was in the name of Sh. Gangadhara. But the applicants have proved the said statement as false through documents that on the date of the accident, the vehicle was in the name of the Respondent No. 1.

In the above stated facts of the matter, the Supreme Court held as follows:

"In view of the above discussion we are of the considered view that as on the date of accident, the deceased workman was in the course of employment of Jeeva Rathna Setty in whose name the ownership of the vehicle stood transferred and the said vehicle was covered under a valid insurance policy, the High Court ought not have simply brushed aside the decision of the Commissioner fastening joint liability on the Insurance Company in the light of the deeming provision contained in Section 157(1) of the M.V. Act.

For the foregoing reasons, we allow this appeal, set aside the impugned judgment passed by the High Court and restore the judgment of the trial Court."

Therefore, the contention of the insurance company that the 1st opposite party is

not the registered owner of the vehicle and that the deceased was the employee of the 1st opposite party and that the 2nd opposite party was the registered owner of the vehicle and the policy stands in the name of the 2nd opposite party and that therefore, the insurance company/3rd opposite party is not liable to pay any compensation and the other contentions that there is no employer-employee relationship between the 2nd opposite party/insured and the deceased are all devoid of merit and deserve no countenance.

7.1 Coming now to the contention that no premium was collected under the policy to cover the risk of the driver of the vehicle, admittedly, exhibit B1, insurance policy was issued in respect of the subject lorry and it was valid and was in force at the time of the accident. It is stated that it is not disputed by the applicants that no premium was collected under the said policy to cover the liability in case of personal injuries or the death of a driver. Basing on the said submission, the learned counsel for the 3rd opposite party would contend that the order impugned fastening liability on the 3rd opposite party is erroneous and is liable to be set aside. The other contentions on this relevant aspect are already stated supra.

7.2 Firstly, the relevant legal aspect, in the decision in Ramashray Singh Vs. New India Assurance Co. Ltd. and Others, (2003) 2 ACC 706 : (2003) ACJ 1550 : AIR 2003 SC 2877 : (2003) 116 CompCas 643 : (2003) 3 CTC 380 : (2003) 6 JT 97 : (2003) 3 LLJ 740 : (2003) 135 PLR 796 : (2003) 5 SCALE 377 : (2003) 10 SCC 664 : (2003) 1 SCR 666 Supp : (2003) 2 UJ 1263 , the facts and ratio are as follows:

Certain passengers were carried for hire in a trekker on which the deceased therein was employed as a khalsar. His legal heirs claimed compensation under the Act. Since it was found that the vehicle was comprehensively insured, the insurance company was made liable. That order of the Commissioner was challenged before the High Court. The High Court had held that in the absence of any special contract, the rights of the parties were governed by the statute and the statute did not require the insurer to cover the liability in respect of an accident to a khalasi. That order was impugned in the Civil Appeal before the Supreme Court and it was contended that the policy expressly covered the death or injury to the Khalasi by drawing attention to the particulars in regard to seating capacity of the vehicle under which sub-head the figure "13+1" was inserted. The Supreme Court considered the admitted fact that a cleaner would include a khalasi; However, the Supreme Court had held that the contention that the policy was comprehensive one and would therefore, cover all the risks is unacceptable and that even assuming that the kahalsi is a conductor, the insurance company cannot be made liable as no premium was collected to cover the risk of injury to a conductor and as the insurance policy covers only the person or classes of persons specified in the policy. Finally, the Supreme Court had held that since the concerned employee was not engaged as a driver in respect of whom premium was paid apart from passengers, his claim is

unsustainable.

7.3 In *Dudekula Salabee Vs. R. Siva Sankar Reddy and Another*, (2009) ACJ 1053 : (2008) 1 ALD 161 , it was noticed by this Court that there is no separate contractual obligation between the insured and the insurer covering the risk of the owner of a tractor and trailer; and, that therefore, it was held that the question of liability of insurer does not arise in view of the limitations under the provisions of the M.V. Act.

7.4 In *New India Assurance Co. Ltd. Vs. Suraya Bee and Others*, (2010) ACJ 1145 : (2009) 4 ALT 760 : (2011) 1 TAC 612 , this Court following the ratio in *Ramashray Singh Vs. New India Assurance Co. Ltd. and Others*, (2003) 2 ACC 706 : (2003) ACJ 1550 : AIR 2003 SC 2877 : (2003) 116 CompCas 643 : (2003) 3 CTC 380 : (2003) 6 JT 97 : (2003) 3 LLJ 740 : (2003) 135 PLR 796 : (2003) 5 SCALE 377 : (2003) 10 SCC 664 : (2003) 1 SCR 666 Supp : (2003) 2 UJ 1263 had held that unless and until extra premium is paid under the contract of insurance, the cleaner is not covered under the policy and that the insurer is not liable to pay the compensation as no such extra premium was paid as is evident from the facts in the cited case.

7.5 In *K. Sarveswara Rao Vs. Kakaraparthi Anjali Devi, Kakaraparthi Parameswaramma and The Oriental Insurance Co. Ltd.*, (2014) 1 ACC 429 : (2013) 5 ALD 351 , the facts would disclose that no separate premium was paid to cover the liability of the driver of the bus and however, a contention was raised by the learned counsel for the owner of the bus that no separate premium is required to be paid to cover the risk of the driver of the bus and once an insurance policy on passenger transport vehicle is taken, the insurance coverage automatically extends to the driver. It was also urged that additional premium was paid to cover the risk of a cleaner of the vehicle. Nonetheless, the learned counsel for the insurance company placed reliance on *Ramashray Singh's* case (*supra*) and had contended that even in a case where a Khalasi was equated to a conductor, there is need to show that the owner paid additional premium to cover the risk of a conductor and that therefore, unless additional premium is paid to cover the risk of a driver, the insurance company cannot be fastened with any liability. This Court considered the facts and the ratios in the decisions cited before it and had held as follows: "In view of the principle of law enunciated in the above precedents, the provisions of Section 147 of the Motor Vehicle Act, 1988 and the terms of the insurance policy (Ex. A4/B1), I am of the opinion that the insurance company cannot be fastened with liability to pay compensation as the owner did not pay premium to cover the cleaner and the deceased was a cleaner. I therefore see no error in the decision arrived at by the Commissioner."

7.6 In *The New India Assurance Co. Ltd. Vs. Lodya Shankar and Others*, (2004) 3 ALD 400 : (2004) 102 FLR 8 , the facts would indicate that the owner chose to insure the risk of his driver and cleaner only, by paying Rs. 30/- as premium, but did not pay any premium to cover the risk of his coolies being carried on his lorry. Therefore, this Court held that it is well known that contract of insurance is

but a contract of indemnity, and so the insurer is liable only to the extent of liability it undertook and that therefore, the appellant is not bound to indemnify the 2nd respondent/insured for the risk that occurred to his workers or coolies that were being carried in the lorry and the appellant/insurer has to indemnify him for the risk of his driver and cleaner only and that unless there is a contract between the owner of the vehicle and the insurer, the insurer cannot be made liable for payment of compensation due from the owner of the motor vehicle to a third party. It was thus held in this cited case that unless the owner of the vehicle pays premium to cover the risk of coolies being transported in his lorry, the insurer cannot be made liable for payment of the compensation due to them from their owner.

7.7 In the decision in *Oriental Insurance Company Ltd. Vs. N. Ramanna and Others*, (2005) 2 ACC 687 : (2005) 2 ALD 128 : (2005) 1 ALT 657 : (2005) 1 APLJ 80 , the facts would indicate that the insurance policy covered the driver, the conductor and two workmen, however, the cleaner had died in the pleaded accident and therefore, a question arose as to whether the appellant/insurance company was obliged to pay any compensation to the dependants of the cleaner. This Court had held that since the cleaner is supposed to work under the control of the owner of the vehicle and also under the supervision of the driver, while assisting him in the manner required, the cleaner would fall in the said set of facts and circumstances of the cited case, within the category of "workmen" and that therefore, the appellant is obliged to pay the compensation as the policy covered "two workmen".

7.8 In *National Insurance Co. Ltd. Vs. Prembai Patel and Others*, (2005) 2 ACC 361 : (2005) ACJ 1323 : AIR 2005 SC 2337 : (2005) 125 CompCas 86 : (2005) 3 CTC 569 : (2005) 4 JT 399 : (2005) 2 LLJ 1109 : (2005) 6 SCC 172 : (2005) SCC(L&S) 819 : (2005) 3 SCR 655 : (2005) AIRSCW 2254 : (2005) 3 Supreme 587 , which is a decision rendered on 18.04.2005 by a three-judge Bench of the Supreme Court, the facts and the ratio are as follows:

"In a motor vehicle accident one Sunder Singh, the driver of the truck, had died when an accident had occurred on account of breaking of the arm bolt of the truck; and, the High Court had held that the owner of the vehicle had not taken adequate care in maintaining the vehicle and in keeping it in a road worthy condition. The said finding has become final since not assailed before the Supreme Court and as nor was there any reason to take a contrary view. The High Court had held that the insurance company was liable to satisfy the whole award and a direction was given to it to pay the entire amount of compensation awarded to the claimants (respondents 3 to 6). The appellant/insurer challenged the judgment of the High Court in the Civil Appeal before the Supreme Court. The truck was comprehensively insured. The owner/2nd respondent, while getting his vehicle insured, had paid only that much amount of premium as was required to cover the liability under the Act and he had not paid any premium to cover the entire amount of liability qua an employee; and, therefore, it was

contended that the liability of the insurer would be a restricted one and it need not satisfy the entire award made in favour of the claimants.

Therefore, the question before the Supreme Court was this: "Having regard to the policy taken by the owner of the vehicle and the provisions of Sections 147 and 149 of the M.V. Act, whether the insurer's liability is restricted to that, which is provided under the Act and, if so, whether the insurer is not liable to satisfy the entire award made in favour of the claimants?"

In the afore-stated facts and circumstances of the case, the Supreme Court considered the interpretation of relevant provisions of Sections 147 and 149 of the M.V. Act and had held as follows:

12. The heading of Chapter XI of the Act is Insurance of Motor Vehicles Against Third Party Risks and it contains Sections 145 to 164. Section 146(1) of the Act 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 XI. Clause (b) of sub-section (1) of Section 147 provides that a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of death of or bodily injury to any person or passenger or damage to any property of a third party caused by or arising out of the use of the vehicle in public place. Sub-clauses (i) and (ii) of clause (b) are comprehensive in the sense that they cover both "any person" or "passenger". An employee of owner of the vehicle like a driver or a conductor may also come within the purview of the words "any person" occurring in sub-clause (i). However, the proviso (i) to clause (b) of sub-Section (1) of Section 147 says that a policy shall not be required to cover liability in respect of 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 Act if the employee is such as described in sub-clauses (a) or (b) or (c). The effect of this proviso is that if an insurance policy covers the liability under the Workmen's Act in respect of death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b), it will be a valid policy and would comply with the requirements of Chapter XI of the Act. Section 149 of the Act imposes a duty upon the insurer (insurance company) to satisfy judgments and awards against persons insured in respect of third party risks. The expression - "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)" - occurring in subsection (1) of Section 149 is important. It clearly shows that any such liability, which is mandatorily required to be covered by a policy under clause (b) of Section 147(1), has to be satisfied by the insurance company. The effect of this provision

is that an insurance policy, which covers only the liability arising under the Workmen's Act in respect of death of or bodily injury to any such employee as described in sub-clauses (a) or (b) or (c) to proviso (i) to Section 147(1)(b) of the Act is perfectly valid and permissible under the Act. Therefore, where any such policy has been taken by the owner of the vehicle, the liability of the insurance company will be confined to that arising under the Workmen's Act.

13. The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen's Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy.

14. The aforesaid interpretation of the relevant provisions applicable to the case in hand is in consonance with the view expressed by a Constitution Bench in *New India Assurance Co. Ltd. Vs. C.M. Jaya and Others*, (2002) 1 ACC 271 : (2002) ACJ 271 : AIR 2002 SC 651 : (2002) 110 CompCas 6 : (2002) 1 JT 198 : (2002) 2 PLR 171 : (2002) 1 SCALE 183 : (2002) 2 SCC 278 : (2002) 1 SCR 298 : (2002) AIRSCW 259 : (2002) AIRSCW 4162 : (2002) AIRSCW 4162 : (2002) 7 Supreme 39 : (2002) 1 Supreme 170 : (2002) 7 Supreme 39 , where, while interpreting the provisions of Section 95(2) of Motor Vehicles Act, 1939, the Court held as under in para 10 of the report:-

" The liability could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself. However, there is nothing in Section 95 of the Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risk. In such an event, the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in the policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to rewriting the statute or the contract of insurance which is not permissible."

The Bench also referred to earlier decisions rendered in *New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others*, (1995) 1 ACC 667 : (1995) ACJ 470 : AIR 1995 SC 1113 : (1995) 83 CompLJ 71 : (1991) 3 Crimes 418 : (1995) 2 JT 95 : (1995) 110 PLR 102 : (1995) 1 SCALE 472 : (1995) 2 SCC 539 : (1995) 1 SCR 871 : (1995) 1 UJ 482 and *Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others*, (1998) 1 ACC 332 : (1998) ACJ 531 : (1998) 4 AD 23 : AIR 1998 SC 1433 : (1998) 92 CompCas 305 : (1998) 2 JT 484 : (1998) 119 PLR

665 : (1998) 2 SCALE 344 : (1998) 3 SCC 744 : (1998) 2 SCR 284 : (1998) AIRSCW 1327 : (1998) 3 Supreme 10 , and observed that in case of an insurance policy not taking any higher liability by accepting a higher premium, the liability of the insurance company is neither unlimited nor higher than the statutory liability fixed under Section 95(2) of the Motor Vehicles Act, 1939. It was further observed that it is open to the insured to make payment of additional higher premium and get higher risk covered in respect of third party also. But in the absence of any such clause in the insurance policy, the liability of the insurer cannot be unlimited in respect of third party and it is limited only to the statutory liability.

15. Though the aforesaid decision has been rendered on Section 95(2) of the Motor Vehicles Act, 1939 but the principle underlying therein will be fully applicable here also. It is thus clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) should not be restricted to that under the Workmen's Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act."

7.9 A plain reading of the above decision rendered by a Bench of three Hon'ble Judges of the Supreme Court lays bare that sub-clauses (i) and (ii) of clause (b) of Section 147 are comprehensive in the sense that they cover both "any person" or "passenger" and that an employee of owner of the vehicle like a driver or a conductor may also come within the purview of the words "any person" occurring in sub-clause (i) and that however, the proviso (i) to clause (b) of sub-section (1) of Section 147 says that policy shall not be required to cover the liability in respect of 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 employee arising out of and in the course of his employment other than a liability arising under the Workmen's Act, if the employee is such as described in sub-clauses (a) or (b) or (c). The Supreme Court had also held in this decision that the effect of this proviso is that if an insurance policy covers the liability under the Workmen's Act in respect of death or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b), it will be a valid policy and would comply with the requirements of Chapter XI of the M.V. Act and that Section 149 of the M.V. Act imposes a duty upon the insurer (insurance company) to satisfy judgments and awards against persons insured in respect of third party risks. The Supreme Court also held that the expression "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) occurring in sub-Section (1) of Section 149 is important and that it clearly shows that any such liability, which is

mandatorily required to be covered by a policy under clause (b) of Section 147(1) of the M.V. Act has to be satisfied by the insurance company and that the effect of this provision is that an insurance policy, which covers only the liability arising under the workmen's Act in respect of death of or bodily injury to any such employee as described in sub-clauses (a) or (b) or (c) to proviso (i) to Section 147(1)(b) of the Act is perfectly valid and permissible under the said Act and that therefore, where, any such policy has been taken by the owner of the vehicle, the liability of the insurance company will be confined to that arising under the Workmen's Act. From the ratio in the decision it is thus clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) should not be restricted to that under the Workmen's Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act.

8. Having regard to the facts and the evidence it can safely be concluded that there was a policy under exhibit B1 in existence and that there was a valid transfer for consideration of the mini Lorry/vehicle by the 2nd opposite party in favour of the 1st opposite party coupled with the delivery of possession of the vehicle and that the 1st opposite party is exercising peaceably the ordinary rights of ownership; and, under law there was also a deemed transfer of the policy in favour of the 1st opposite party, who was the employer of the deceased/driver; and, further, in view of the precedential guidance in the decision of the Supreme Court in *National Insurance Co. Ltd. Vs. Prembai Patel and Others*, (2005) 2 ACC 361 : (2005) ACJ 1323 : AIR 2005 SC 2337 : (2005) 125 CompCas 86 : (2005) 3 CTC 569 : (2005) 4 JT 399 : (2005) 2 LLJ 1109 : (2005) 6 SCC 172 : (2005) SCC(L&S) 819 : (2005) 3 SCR 655 : (2005) AIRSCW 2254 : (2005) 3 Supreme 587 and in the light of the statutory provisions, it can safely be held that the learned Commissioner was justified in holding that the 3rd opposite party/appellant is liable to pay the compensation awarded to the applicant as per the provisions of the M.V. Act and the Workmen's Compensation Act. Though it is contended that the age of the deceased was not correctly determined, a plain reading of the impugned order shows that when it was suggested to PW 1 that her husband was 36 years of age, she had denied the suggestion and that the learned Commissioner had relied upon the crime records in fixing the age of the deceased as "31" years at the time of his involvement in the accident. Hence, the said approach cannot be found fault. This Court, thus, on a careful examination finds that the compensation was correctly determined having regard to the facts and on proper appreciation of the evidence brought on record and that therefore, the order impugned calls for no interference. The points are accordingly answered against the appellant/3rd opposite party holding that the

impugned order of the learned Commissioner is sustainable, both under facts and in law.

9. In the result, the appeal is dismissed. No costs.

Miscellaneous petitions, if any, pending in this appeal shall stand dismissed.