

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF APRIL, 2021



PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE H.T. NARENDRA PRASAD

AND

THE HON'BLE MR.JUSTICE HEMANT CHANDANGOUDAR

MFA CROB NO.100001/2016 IN MFA NO.102649/2015

CONNECTED WITH

MFA NO.22106/2012, MFA NO.23434/2012, MFA

NO.102649/2015, MFA NO.102650/2015, MFA

NO.102651/2015, MFA NO.296/2016, MFA CROB

NO.100002/2016 IN MFA NO.102650/2015, MFA CROB

NO.100003/2016 IN MFA NO.102651/2015 AND MFA CROB

NO.100128/2016 IN MFA NO.23434/2012

IN MFA.CROB No.100001 OF 2016
IN MFA NO.102649/2015

BETWEEN

1. GADHILINGAPPA @ GADHILINGA
S/O ULLURU MALLAPPA @ YELLAPPA
AGED ABOUT 39 YEARS,

OCC:LABOUR
R/O:NEW YERRAGUDI VILLAGE
TQ:DIST:BELLARY

- 2 . BHAGYAMMA W/O GADHILINGAPPA @ GADHILINGA
AGED ABOUT 37 YEARS
OCC:HOUSE WIFE,
R/O:NEW YERRAGUDI VILLAGE
TQ:DIST:BELLARY

...CROSS OBJECTORS

(BY SMT. SUNITHA P KALASOOR, ADVOCATE)

AND

- 1 . K. GULEPPA S/O K LINGAPPA
AGED ABOUT 38 YEARS
OCC:DRIVER OF THE TRACTOR
BEARING NO.KA-34/T-4232,
R/O KARCHEDU VILLAGE
TQ:DIST:BELLARY
- 2 . HANUMESH S/O NENIKAPPA
AGED ABOUT 43 YEARS
OCC:OWNER OF THE TRACTOR
BEARING NO.KA-34/T-4232,
R/O KARCHEDU VILLAGE
TQ:DIST:BELLARY
- 3 . UNITED INDIA INSURANCE COMPANY LIMITED
OPP. RADHIKA TALKIES BELLARY
REPRESENTED BY ITS DIVISIONAL MANAGER
BELLARY

...RESPONDENTS

(NOTICE TO R1 AND R2 DISPENSED
WITH VCO DATED 13.12.2012.
BY SMT PREETI SHASHANK, ADVOCATE
FOR SRI.B.C. SEETHARAMA RAO, ADVOCATE FOR R3)

THIS MFA CROB IN MFA 102649/2015 FILED UNDER SECTION 173 (1) OF MV ACT, AGAINST JUDGMENT AND AWARD DATED 19.06.2015, PASSED IN MVC NO.559/2014 ON THE FILE OF THE III MOTOR ACCIDENT CLAIMS TRIBUNAL, BALLARI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA No.22106 OF 2012

BETWEEN

THE DIVISIONAL MANAGER
NATIONAL INSURANCE COMPANY LTD
SUJATA COMPLEX, P.B.ROAD,
HUBBALLI, REPRESENTED BY
ADMINISTRATIVE OFFICER,
NATIONAL INSURANCE CO.LTD.,
REGIONAL OFFICE,
SUJATHA COMPLEX, HUBBALLI

...APPELLANT

(BY SRI. A G JADHAV, ADVOCATE)

AND

1 . SRI BASAVARAJ
S/O SHANMUKAPPA
AGE: 24 YEARS, OCC: HAMALI R/O YALGERI,
TQ: SHIKARIPUR, DIST: SHIVAMOGGA,
NOW AT MOTEBENNUR,
TQ: BYADAGI, DIST: HAVERI.

2 . SRI SHANMUKAAPPA
S/O CHANNABASAPPA
AGE: MAJOR, OCC: BUSINESS
R/O YALGERI, TQ: SHIKARIPUR,
DIST: SHIVAMOGGA,
OWNER OF VEHICLE BEARING NO.KA-15/T-4484

...RESPONDENTS

(R1 SERVED,
SRI. LAXMAN T MANTAGANI, ADVOCATE FOR R2)

THIS MFA FILED UNDER SECTION 173 (1) OF MV ACT, 1988 TO SET ASIDE THE JUDGMENT AND AWARD DATED 06.03.2012, PASSED IN MVC NO.916/2010 ON THE FILE OF THE SENIOR CIVIL JUDGE AND MEMBER, ADDITIONAL MACT, IT COURT, BYADAGI, AWARDED COMPENSATION OF RS.2,96,500/- WITH INTEREST AT THE RATE OF 6% P.A., FROM THE DATE OF PETITION TILL REALIZATION.

IN MFA No.23434 OF 2012

BETWEEN

1. THE BRANCH MANAGER
THE NEW INDIA ASSURANCE CO. LTD.,
HOSPETH, NOW REPRESENTED BY ITS
ASSISTANT MANAGER,
U M RAIKAR,
NEW INDIA ASSUARANCE CO. LTD.,
MTP HUBBALLI, DIVISIONAL OFFICE,
SRINATH COMPLEX, NCM HUBBALLI.

...APPELLANT

(BY SMT. PREETI SHASHANK, ADVOCATE)

AND

1. KENCHAPPA
S/O SHANKRAMMA
AGE: 41 YEARS,
OCC: NOT MENTIONED
R/O: P K HALLI, TQ: HOSPETH,
DIST: BELLARY,
NOW AT 5TH WARD,
MINIRABAD, TQ & DIST: KOPPAL.
2. KUMAR GADHILINGAPPA
S/O KENCHAPPA
AGE: 15 YEARS,

MINOR REPRESENTED BY PETITIONER
NO.1, R/O: 5TH WARD, MINIRABAD,
TQ & DIST: KOPPAL.

3. S DAWOOD
S/O REDDY BABANGOU DA
AGE: MAJOR, OCC: OWNER OF TT UNIT
R/O: PAPINAYAKANAHALLI,
TQ: HOSPET, DIST: BELLARY.

...RESPONDENTS

(BY SRI. M AMAREGOWDA, ADVOCATE FOR R1 AND R2,
SRI. B.C. JNANAYASWAMY, ADVOCATE FOR R3)

THIS MFA FILED UNDER SECTION 30 OF THE
WORKMEN COMPENSATION ACT, 1923 AGAINST THE
JUDGMENT AND AWARD, DATED 31.05.2012 PASSED IN
WCA NO.8/2011 BY THE LABOUR OFFICER AND
COMMISSIONER FOR WORKMEN COMPENSATION,
KOPPAL AWARDED COMPENSATION OF Rs.3,54,708/-
WITH INTEREST AT THE RATE OF 12% P.A., FROM THE
DATE OF PETITION TILL REALIZATION.

IN MFA No.102649 OF 2015

BETWEEN

UNITED INDIA INSURANCE CO. LTD.,
OPP. RADHIKA TALKIES BALLARI
REPRESENTED BY ITS DIVISIONAL MANAGER

...APPELLANT

(BY SMT. PREETI SHASHANK, SHASHANK S HEGDE,
ADVOCATES FOR SRI. B.C. SEETHARAMA RAO,
ADVOCATE)

AND

1. SRI. GADHILINGAPPA @ GADHILINGA
S/O LATE ULLURU MALLAPPA @ YELLAPPA
AGED ABOUT: 39 YEARS,

OCC: LABOUR,
R/O: NEW YERRAGUDI VILLAGE,
TQ & DIST: BALLARI

- 2 . SMT. BHAYAMMA W/O GADHILINGAPPA
@ GADHILINGA
AGED ABOUT: 37 YEARS,
OCC: HOUSE WIFE,
R/O: NEW YARRAGUDI VILLAGE,
TQ & DIST: BALLARI
- 3 . SRI. K GULEPPA S/O K LINGAPPA
AGED ABOUT: 38 YEARS,
OCC: DRIVER OF THE TRACTOR
BEARING NO.KA-34/T-4232,
R/O: KARCHEDU VILLAGE,
TQ & DIST: BALLARI
- 4 . SRI. HANUMESH S/O NENIKAPPA
AGED ABOUT: 43 YEARS,
OCC: OWNER OF THE TRACTOR
BEARING NO.KA-34/T-4232,
R/O: KARCHEDU VILLAGE,
TQ & DIST: BALLARI

...RESPONDENTS

(BY SMT. SUNITHA P KALASOOR FOR R1-R4)

THIS MFA FILED UNDER SECTION 173 (1) OF MV ACT, 1988 TO SET ASIDE THE JUDGMENT AND AWARD DATED 19.06.2015, PASSED IN MVC NO.559/2014 ON THE FILE OF THE MACT – III AT BALLARI, AWARDING COMPENSATION OF Rs.5,55,000/- ALONG WITH INTEREST AT THE RATE OF 6% P.A., FROM THE DATE OF PETITION TILL THE DATE OF DEPOSIT.

IN MFA No.102650 OF 2015

BETWEEN

- 1 . UNITED INDIA INSURANCE CO. LTD.,
OPP. RADHIKA TALKIES BALLARI
REPRESENTED BY ITS DIVISIONAL MANAGER

...APPELLANT

(BY SMT. PREETI SHASHANK, SRI. SHASHANK S HEGDE,
ADVOCATES FOR B.C. SEETHARAMA RAO, ADVOCATE)

AND

- 1 . SRI. ULTEPPA S/O RAMAPPA
AGED ABOUT: 33 YEARS,
OCC: COOLIE, R/O: KORACHEDU VILLAGE,
TQ & DIST: BALLARI
- 2 . SRI. K GULEPPA S/O K LINGAPPA
AGED ABOUT: 38 YEARS,
OCC: DRIVER OF THE TRACTOR
BEARING NO.KA-34/T-4232,
R/O: KARCHEDU VILLAGE,
TQ & DIST: BALLARI
- 3 . SRI. HANUMESH
S/O NENIKAPPA
AGED ABOUT: 43 YEARS,
OCC: OWNER OF THE TRACTOR
BEARING NO.KA-34/T-4232,
R/O: KARCHEDU VILLAGE,
TQ & DIST: BALLARI

...RESPONDENTS

(By SMT. SUNITHA P KALASOOR FOR R1-R3)

THIS MFA FILED UNDER SECTION 173 (1) OF MV
ACT, 1988 TO SET ASIDE THE JUDGMENT AND AWARD
DATED 19.06.2015, PASSED IN MVC NO.560/2014 ON THE

FILE OF THE MACT – III AT BALLARI, AWARDING
COMPENSATION OF Rs.2,30,800/- WITH INTEREST AT THE
RATE OF 6% P.A., FROM THE DATE OF PETITION TILL THE
DATE OF DEPOSIT.

IN MFA No.102651 OF 2015

BETWEEN

1 . UNITED INDIA INSURANCE CO. LTD.,
OPP. RADHIKA TALKIES BALLARI
REPRESENTED BY ITS DIVISIONAL MANAGER
...APPELLANT

(BY SMT. PREETI SHASHANK, SRI. SHASHANK S HEGDE,
ADVOCATES FOR B.C. SEETHARAMA RAO, ADVOCATE)

AND

1 . SRI.K MALLIKARJUNA
S/O K SHANMUKAPPA
AGED ABOUT: 33 YEARS, OCC: COOLIE,
R/O: KARACHEDU VILLAGE,
TQ & DIST: BALLARI

2 . SRI.K GULEPPA
S/O K LINGAPPA
AGED ABOUT: 38 YEARS,
OCC: DRIVER OF THE TRACTOR
BEARING NO.KA-34/T-4232,
R/O: KARCHEDU VILLAGE,
TQ & DIST: BALLARI

3 . HANUMESH,
S/O NENIKAPPA
AGED ABOUT: 43 YEARS,
OCC: OWNER OF THE TRACTOR
BEARING NO.KA-34/T-4232,
R/O: KARCHEDU VILLAGE,
TQ & DIST: BALLARI

...RESPONDENTS

(By SMT. SUNITHA P KALASOOR, ADVOCATE FOR R1-R3)

THIS MFA FILED UNDER SECTION 173 (1) OF MV ACT, 1988 TO SET ASIDE THE JUDGMENT AND AWARD DATED 19.06.2015, PASSED IN MVC NO.561/2014 ON THE FILE OF THE MACT – III AT BALLARI, AWARDING COMPENSATION OF Rs.2,30,800/- WITH INTEREST AT THE RATE OF 6% P.A., FROM THE DATE OF PETITION TILL THE DATE OF DEPOSIT.

IN MFA No.296 OF 2016

BETWEEN

THE NEW INDIA ASSURANCE COMPANY LTD
NO.2241/4, GIRIYAMMA SHAMBHUGOWDA COMPLEX
CHURCH ROAD
CHANNAPATNA TOWN
RAMANAGARA DISTRICT - 571501
REPRESENTED BY ITS DIVISIONAL MANAGER

...APPELLANT

(BY SRI. SANMATHI E I, ADVOCATE)

AND

- 1 . SRI.KEMPEGOWDA
S/O LATE MALLEGOWDA
AGED MAJOR
R/A S M DODDI VILLAGE
AKKUR POST
VIRUPAKSHIPURA HOBLI
CHANNAPATNA TALUK
RAMANAGARA DISTRICT-571501
- 2 . SRI NAGEGOWDA
S/O LATE SHIVALINGEGOWDA
AGED ABOUT 44 YEARS
R/A DODDAVITALENAHALLI VILLAGE
VIRUPAKSHIPURA HOBLI

CHANNAPATNA TALUK
RAMANAGARA DISTRICT

- 3 . SMT MANJULA
W/O NAGEGOWDA
AGED ABOUT 4 YEARS
R/A DODDAVITALENAHALLI VILLAGE
VIRUPAKSHIPURA HOBLI
CHANNAPATNA TALUK
RAMANAGARA DISTRICT
- 4 . SRI AJAY V N
S/O NAGEGOWDA
AGED ABOUT 18 YEARS
R/A DODDAVITALENAHALLI VILLAGE
VIRUPAKSHIPURA HOBLI
CHANNAPATNA TALUK
RAMANAGARA DISTRICT

...RESPONDENTS

(R1 SERVED,

By SRI T P VIVEKANANDA, ADVOCATE FOR R2 - R4)

THIS MFA FILED UNDER SECTION 173 (1) OF MV ACT, 1988 TO SET ASIDE THE JUDGMENT AND AWARD DATED 05.10.2015, PASSED IN MVC NO.229/2013 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC., ADDITIONAL MACT, CHANNAPATTANA, AWARDDING COMPENSATION OF Rs.7,79,000/- WITH INTEREST AT THE RATE OF 6% P.A., FROM THE DATE OF PETITION TILL THE DATE OF DEPOSIT.

IN MFA.CROB No.100002 OF 2016

IN MFA NO.102650/2015

BETWEEN

SRI.ULTEPPA S/O RAMAPPA
AGED ABOUT 34 YEARS
OCC:COOLIE

R/O:KORACHEDU VILLAGE
TQ:DIST:BELLARY

... CROSS OBJECTOR

(BY SMT. SUNITHA P KALASOOR, ADVOCATE)

AND

- 1 . K. GULEPPA
S/O K LINGAPPA
AGED ABOUT 38 YEARS
OCC:DRIVER OF THE TRACTOR
BEARING NO.KA-34/T-4232,
R/O KARCHEDU VILLAGE
TQ:DIST:BELLARY
- 2 . HANUMESH S/O NENIKAPPA
AGED ABOUT 43 YEARS
OCC:OWNER OF THE TRACTOR
BEARING NO.KA-34/T-4232,
R/O KARCHEDU VILLAGE
TQ:DIST:BELLARY
- 3 . UNITED INDIA INSURANCE COMPANY LIMITED
OPP. RADHIKA TALKIES BELLARY
REP BY ITS DIVISIONAL MANAGER
BELLARY

...RESPONDENTS

(NOTICE TO R1 AND R2 DISPENSED
WITH VCO DT.13.12.2017,
BY SMT. PREETI SHASHANK, ADVOCATE
FOR B.C. SEETHARAMA RAO, ADVOCATE FOR R3)

THIS MFA CROB IN MFA NO.102650/2015 FILED
UNDER SECTION 173 (1) OF MV ACT, 1988 TO SET ASIDE
THE JUDGMENT AND AWARD DATED 19.06.2015, PASSED
IN MVC NO.560/2014 ON THE FILE OF THE MACT – III,
BALLARI PARTLY ALLOWING THE CLAIM PETITION FOR
COMPENSATION AND SEEKING ENHANCEMENT OF
COMPENSATION.

IN MFA.CROB No.100003 OF 2016
IN MFA NO.102651/2015

BETWEEN

SRI.MALLIKARJUNA
S/O K SHANMUKAPPA
AGED ABOUT 33 YEARS
OCC:COOLIE, R/O:KORACHEDU VILLAGE
TQ:DIST:BELLARY

...CROSS OBJECTOR

(BY SMT. SUNITHA P KALASOOR)

AND

- 1 . K. GULEPPA
S/O K LINGAPPA, AGED ABOUT 38 YEARS
OCC:DRIVER OF THE TRACTOR
BEARING NO.KA-34/T-4232,
R/O KARCHEDU VILLAGE
TQ:DIST:BELLARY
- 2 . HANUMESH
S/O NENIKAPPA
AGED ABOUT 43 YEARS
OCC:OWNER OF THE TRACTOR
BEARING NO.KA-34/T-4232,
R/O KARCHEDU VILLAGE
TQ:DIST:BELLARY
- 3 . UNITED INDIA INSURANCE COMPANY LIMITED
OPP. RADHIKA TALKIES BELLARY
REPRESENTED BY ITS DIVISIONAL MANAGER
BELLARY

...RESPONDENTS

(NOTICE TO R1 AND R2 IS DISPENSED
WITH VCO DT.13.12.2017,
BY SMT : PREETI SHASHANK, ADVOCATE FOR
B.C. SEETHARAMA RAO, ADVOCATE FOR R3)

THIS MFA CROB IN MFA NO.102651/2015 FILED UNDER SECTION 173 (1) OF MV ACT, 1988 TO SET ASIDE THE JUDGMENT AND AWARD DATED 19.06.2015, PASSED IN MVC NO.561/2014 ON THE FILE OF THE MACT – III, BALLARI PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

IN MFA.CROB No.100128 OF 2016
IN MFA NO.23434/2012

BETWEEN

- 1 . SRI. KENCHAPPA
S/O SHANKRAMMA,
AGE: 45 YEARS,
OCC: LABOUR, R/O: P.K. HALLI,
TALUK: HOSAPETE & DIST: BALLARI.
NOW AT 5TH WARD, MINIRABAD,
TALUK & DIST: KOPPAL-58322.

- 2 . GADHILINGAMMA
D/O KENCHAPPA,
AGE: 19 YEARS,
R/O: P.K. HALLI,
TALUK: HOSAPETE & DIST: BALLARI.
NOW AT 5TH WARD, MINIRABAD,
TAL & DIST: KOPPAL-58322.

... CROSS OBJECTORS

(BY SRI. M AMAREGOWDA, ADVOCATE)

AND

- 1 . SHRI.S. DAWOOD
S/O REDDY BABANGOUA,
AGE: 47 YEARS,
OCC: OWNER TT UNIT,
R/O: PAPINAYAKANAHALLI,

TALUK: HOSAPETE,
DIST: BALLARI-583101.

2. THE BRANCH MANAGER,
THE NEW INDIA ASSURANCE CO. LTD.,
HOSAPETE,
NOW REPRESENTED BY ITS
ASST MANAGER, U.M. RAIKAR,
NEW INDIA ASSURANCE CO. LTD.,
MTP HUBBALLI DIVISIONAL OFFICE
SRINATH COMPLEX NCM
HUBBALLI.

...RESPONDENTS

(R1 SERVED,
BY SMT. PREETI SHASHANK, ADVOCATE FOR R2)

THIS MFA CROB IN MFA NO.23434/2012 IS FILED UNDER ORDER LXXXI RULE 22 OF CPCP AGAINST THE ORDER DATED 31.05.2012 PASSED IN WCA 8/2011 ON THE FILE OF THE LABOUR OFFICER AND COMMISSIONER FOR WORKMEN COMPENSATION, KOPPAL DISTRICT, KOPPAL AND SEEKING ENHANCEMENT OF COMPENSATION.

THESE MFA CROSS OBJECTIONS AND MFAs ARE REFERRED TO THE FULL BENCH FOR CONSIDERATION OF THE FOLLOWING REFERENCES MADE BY THE LEARNED SINGLE JUDGE: (i) Whether a person travelling on a mud-guard of a tractor can be construed as an authorized passenger or an unauthorized passenger and liability of such person is covered or not? (ii) Whether the persons who are working either on the ploughing or crushing machines attached to the tractor can be construed as employees so as to cover their risk statutorily under Section 147 of MV Act though there is only one seating capacity in the tractor apart from the driver? (iii) Whether the crushing machine or ploughing machine or any other instrument attached to the tractor can be considered to

be an attachment to the tractor so as to cover the risk of the insured in respect of employees and the policy taken in respect of the tractor alone? (iv) What is the effect of Section 147 of MV Act to cover the statutory risk under the said situation?

THESE MFA CROSS OBJECTIONS AND MFAs HAVING HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT OF ORDER , THIS DAY, **THE CHIEF JUSTICE** DELIVERED THE FOLLOWING:

JUDGMENT

A learned Single Judge of this Court, by the Judgment and order dated 2nd January, 2018 disposed of MFA Crob Nos. 100001/2016 (MV) in MFA No.102649/2015, MFA Crob Nos. 100003/2016 (MV) in MFA No.102651/2015, MFA Crob Nos. 100002/2016 (MV) in MFA No.102650/2015, MFA No.102649, MFA No.102650/2015 and MFA No.102651/2015. While disposing of the said MFA cross objections and appeals, the learned Single Judge was of the view that since there are conflicting decisions rendered by the co-ordinate Benches of this Court, the following questions are required to be referred to a larger Bench of this Court:

- I) Whether a person travelling on a mud-guard of a tractor can be construed as an authorized passenger or an unauthorized passenger and liability of such person is covered or not?

- II) Whether the persons who are working either on the ploughing or crushing machines attached to the tractor can be construed as employees so as to cover their risk statutorily under Section 147 of MV Act though there is only one seating capacity in the tractor apart from the driver?

- III) Whether the crushing machine or ploughing machine or any other instrument attached to the tractor can be considered to be an attachment to the tractor so as to cover the risk of the insured in respect of employees and the policy taken in respect of the tractor alone?

- IV) What is the effect of Section 147 of MV Act to cover the statutory risk under the said situation?

2. In M.F.A.No.22106/2012 (MV), the same learned Single Judge, by the Order dated 14th March, 2018 referred to the aforesaid Judgment and order dated 2nd January, 2018 delivered in MFA Crob No. 10000/2016 (MV) and other connected matters. The learned Single Judge observed that in view of the reference made by him to the larger Bench by the aforesaid Judgment and order dated 2nd January, 2018, even the said appeal being MFA No.22106/2012 be also placed

before the larger Bench for deciding the same issues. As, the similar issues were involved in MFA No.23434/2012, MFA. No. 296/2016 and MFA Crob No.100128/2016 in MFA No.23434/2012, they were clubbed with this batch of appeals. By a special order dated 23rd November, 2020, the present Full Bench is constituted to decide the above issues.

SUBMISSIONS:

3. The submissions have been made on behalf of the claimants by Shri. S.P. Shankar, the learned Senior Advocate. Shri. A.K. Bhat, the learned Advocate also sought leave of the Court to make his submissions for supporting the case of the claimants. On behalf of the insurance companies, submissions have been made by the learned counsel Shri. B.C. Seetharama Rao and Shri. A.G. Jadhav.

4. We may note here that some submissions were made on the issue whether in a given facts of the case, an insurer can be held liable for payment of compensation to the claimants in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V Act'). However, we are not concerned with any specific case. We are called upon to decide the questions formulated by the learned Single Judge

which revolve around the requirement of statutory insurance under Section 147 of Chapter XI of the M.V. Act. We may also note here that we are considering the provisions of the M.V. Act as amended by the Act No.54 of 1994. We are not called upon to consider the provisions of the M.V. Act as amended by the Act No. 32 of 2019.

5. We must note here that after the submissions were concluded, Shri. S.P. Shankar, the learned Senior Counsel placed on record a decision of the Constitution Bench of the Apex Court in the case of ***Dr. Shah Faesal and others –vs- Union of India and another***¹. The said decision was placed on record as it appears that the learned senior counsel wants to argue that the reference made by the learned Single Judge to a larger Bench was not warranted at all.

6. The submission of the learned Senior Counsel was that the tractor in question was used in the agricultural field of the insured at the time of the accident and it was covered by a comprehensive insurance policy. He submitted that as per the provisions of Section 147 of the MV Act, it is mandatory to cover the liability of all the third parties under a policy of

insurance. He submitted that the deceased and the injured persons were coolies engaged in agricultural operations in the agricultural field of the insured. He pointed out that the deceased who was sitting on the mud-guard of the tractor was neither a traveller nor a passenger. He submitted that in the case of **M/S Natwar Parikh and Co. Ltd., -vs- State of Karnataka and others**² the Apex Court held that though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor-trailer would constitute a “goods carriage” under Section 2(14) and consequently, a “transport vehicle” as defined under Section 2(47). He relied upon a decision of the Full Bench of this Court in the case of **Noorulla – vs- P.K. Prabhakar and another**³. He also relied upon a Full Bench decision of this Court in the case of **Bhimavva and others -vs- Shankar alias Adya and others**⁴ and submitted that the questions No (i) and (ii), as framed by the learned Single Judge are covered by the decision in the case of **Bhimavva** (supra) and, therefore, he submitted that the reference be answered by reframing the questions in terms of the decision of the Full Bench of this Court rendered in **Bhimavva** (supra). The

¹ AIR 2020 SC 3601

² AIR 2005 SC 3428

³ 1999-II LLJ 37

⁴ AIR 2004 Karnataka 58

learned senior counsel urged that a tractor is a carriage and, therefore, the reference will have to be answered in the affirmative by holding that the insurer is liable to indemnify the insured, even in respect of the liability of a person sitting on the mud-guard of a tractor or a tractor-trailer. He relied upon the decision of the Punjab High Court (Delhi Bench) in the case of ***Itbar Singh -vs- P.S. Gill and other***⁵. He relied upon the decisions of the Apex Court in the cases of (i) ***Skandia Insurance Co. Ltd -vs- Kokilaben Chandravadan and others***⁶, (ii) ***National Insurance Company Ltd., -vs- Swaran Singh and others***⁷, (iii) ***Guru Govekar -vs- Miss. Filomena F. Lobo and others***⁸, and (iv) ***National Insurance Company Limited -vs- Balakrishnan and another***⁹. He placed reliance on the decision of a Division Bench of this Court in the case of ***National Insurance Company Limited -vs- Sri. Maruthi and others***¹⁰. Lastly, he placed reliance on the decision of the Apex Court in the case of ***Halappa -vs- Malik Sab***¹¹. He submitted that on facts, the said decision holds

⁵ AIR 1955 Punjab (Delhi Bench)187

⁶ AIR 1987 SC 1184

⁷ 2004 ACJ 1

⁸ AIR 1988 SC 1332

⁹ AIR 2013 SC 473

¹⁰ ILR 2011 KAR 4139

¹¹ Civil Appeal Nos.022911-912 of 2017 Dt.15.12.2017

that the insurer is liable to cover the risk of the person who is sitting on the mud-guard of a tractor.

7. Shri. A.K. Bhat, the learned Advocate who assisted the Court submitted that there is no difference between a goods carriage and a goods vehicle and hence, tractor-trailer will also fall in the category of a transport vehicle being a goods carriage. He relied upon a notification issued by the Central Government dated 5th November, 2004, issued in exercise of the powers under Sub-Section (4) of Section 41 of the M.V. Act and submitted that the power tillers and tractors using public roads are included in the category of transport vehicles. He submitted that neither the provisions of the M.V. Act nor the Rules framed thereunder provide for maximum sitting capacity of a tractor. He submitted that under Section 61 (1) of the M.V. Act, even the registration of trailers is made compulsory and hence, the owner of a tractor-trailer and the equipments attached to a tractor are joint tort feasons along with the driver of the tractor and hence, the insurer of each such vehicle is liable to satisfy the claim to the extent specified under Section 147 of the M.V. Act.

8. The learned counsel representing the insurer relied upon the various decisions of the Apex Court which are as under:

- i) ***Dhanraj -vs- New India Assurance Co Ltd and another¹²***
- ii) ***New India Assurance Co. Ltd., -vs- Asha Rani and others¹³***
- iii) ***Shivaraj -vs- Rajendra and another¹⁴***
- iv) ***National Insurance Co. Ltd -vs- V. Chinnamma and others¹⁵***

Reliance was also placed by the learned counsel on the Rules of the Road Regulations, 1989 (for short, “the Road Regulations”) framed by the Central Government in exercise of its powers under Section 118 of the M.V Act. He relied upon Regulation 28 thereof which lays down that a driver, when driving a tractor shall not carry or allow any person to be carried on the tractor.

CONSIDERATION OF SUBMISSIONS - QUESTION No (i)

9. We have carefully considered the submissions made across the Bar. The first question framed by the learned Single Judge is in relation to a person travelling on a mud-guard of a

¹² (2004) 8 SCC 553

¹³ (2003) 2 SCC 223

¹⁴ (2018) 10 SCC 432

¹⁵ (2004) 8 SCC 697

tractor. The issue is whether such a person can be construed as an authorized passenger and whether the liability of such person is required to be statutorily covered by a policy of insurance issued in accordance with Section 147 of the M.V Act. The second question revolves around a fact situation where ploughing or crushing machines are attached to the tractor. The question is whether persons who are working on the ploughing or crushing machines attached to a tractor can be construed as employees whose risk is required to be covered under Section 147 of the M.V Act. The third question is on the issue whether the liability of the employees working on ploughing machine or crushing machine attached to a tractor is required to be covered by the policy of insurance, though the insurance policy is taken only in respect of the tractor. The answer to the question (iv) depends upon the answers to the question Nos (i) to (iii).

10. For determining the reference made by the learned Single Judge, it is necessary to look into the provisions of the M.V Act, as it stood prior to the amendments made to it by the Act No. 32 of 2019 were brought into force. We have to consider the provisions of the M.V. Act before its amendment

made by the Act No. 32 of 2019. Chapter XI of the M.V. Act deals with insurance of motor vehicles against third party risks. Sub-Section (1) of Section 146 of the M.V Act lays down 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. Thus, by virtue of the above statutory provision, obtaining insurance against third party risk is made mandatory for the use of any motor vehicle in a public place. The requirement of having such a policy as provided in sub-sections (1) and (2) of Section 147 of the M.V. Act, for use of any motor vehicle in a public place, is mandatory.

11. Sub-Section (1) of Section 146 and sub-sections (1) and (2) of Section 147 of the M.V. Act which are material for our purpose read thus:

“146. Necessity for insurance against third party risk.—(1) 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 this Chapter:

Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).

Explanation.— A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

147. Requirement of policies and limits of liability.—(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his 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 conductor of the vehicle or in examining tickets on the vehicle, or

(c) If it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation.—For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have

arisen out of, the use of a vehicle in a public place, notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.”

12. On plain reading of sub-section (1) of Section 147 of the M.V. Act, it is clear that in order to comply with the requirements of the provisions of Section 146 and 147, a policy of insurance must be issued by an authorized insurer, as defined in clause (a) of sub-section (1) of Section 147. Clause (b) of sub-section (1) of Section 147 specifies the person or classes of persons who are required to be insured to the extent specified in sub-section (2) of Section 147. In view of clause (b) of sub-section (1) of Section 147, a policy of insurance must cover (i) the liability incurred by the insured in respect of the death of or bodily injury to any person, (ii) the liability which may be incurred by the insured in respect of death of or bodily injury to the owner of the goods or his authorized representative carried in the vehicle and (iii) the liability in respect of 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.

13. The proviso to sub-section (1) of Section 147 of the M.V. Act lays down that the policy shall not be required to cover the liability in respect of a death, arising out of and in the course of employment, of the employee of the insured and in respect of bodily injury sustained by such an employee arising out of and in the course of employment. However, clause (i) of the proviso further clarifies that a liability arising under the Workmen's Compensation Act, 1923 (for short 'the W.C. Act') is required to be covered by the policy in respect of death or bodily injury to any such employees namely, (a) an employee engaged in driving the vehicle or (b) in case of a public service vehicle, a conductor of the vehicle or a person employed to examine the tickets on the vehicle and (c) if it is a goods carriage, being carried in the vehicle. The limit of the liability is laid down in sub-section (2) of Section 147. However, in this case, considering the scope of adjudication, we are not concerned with the same.

14. Thus, a statutory insurance policy covered by Section 147 of the M.V Act is not required to cover the liability in

respect of the death of an employee arising out of and in the course of his employment of the insured or liability in respect of bodily injuries sustained by such an employee arising out of and in the course of his employment. However, the exception is that the liability in respect of the death of or bodily injury to the employees mentioned in sub-clauses (a) to (c) of clause (i) of the proviso to Section 147 of the M.V Act, arising under the W.C Act is required to be covered by a statutory policy. Thus, in other words, a policy of insurance is not required to cover the liability arising of death of an employee or bodily injury to an employee unless it is a liability under the W.C. Act in respect of the employees mentioned in sub-clauses (a) to (c) of clause (i) of the proviso to sub-section (1) of Section 147.

15. Sub-Section (1) of Section 147 of the M.V. Act specifically includes certain categories of persons sitting in the vehicle which is involved in the accident whose liability is required to be covered. Therefore, it emerges that unless sub-section (1) of Section 147 specifically mentions that the liability of a person or a class of persons is required to be covered under a policy of insurance, the same is not required to be mandatorily covered. Sub-clause (i) of clause (b) of sub-

section (1) of Section 147 clearly lays down that the policy must cover the liability of death of or bodily injury to any person including owner of the goods or his authorized representative carried in the vehicle. Obviously, it refers to liability in respect of the owner of the goods or his authorized representative when they are carried in a goods carriage, as defined in sub-section (14) of Section 2 of the M.V. Act. Thus, in a goods carriage, if the owner of the goods or his authorized representative is carried, any liability which incurred in respect of the death of or bodily injury to such persons is required to be covered by a policy of insurance. In view of clause (i) (c) of the proviso to sub-section (1) of Section 147 of the M.V. Act, the liability arising out of the death of or bodily injury to authorized employees of the owner of the goods carried in goods carriage is required to be covered. In view of sub-clause (b) of clause (i) of proviso to sub-section (1) of Section 147, the liability arising out of the injury to conductor or ticket examiner in a public transport vehicle is required to be covered. As provided in sub-clause (a) of clause (i) of the proviso to sub-section (1) of Section 147, even the liability of death of, or bodily injury to a driver of the insured is required to be covered by a policy of insurance.

16. Now coming back to the first part of sub-section (1) of Section 147 of the M.V. Act, the reference therein to the liability in respect of death of or bodily injury to any person mentioned therein is obviously to death of a third party or bodily injury to a third party who is not occupying the insured vehicle. The reason is that the person or class of persons occupying the vehicle whose risk is required to be covered are specifically mentioned in proviso to sub-section (1) of Section 147. The liability of damage caused to the property of the third party for the use of vehicle in a public place will have to be also covered. It is in this context, the questions formulated by the learned Single Judge will have to be considered.

17. For answering the four questions formulated by the learned Single Judge, it is necessary to decide the question whether a tractor can be termed as a 'goods carriage' as defined in sub-section (14) of Section-2 of the M.V. Act. If we peruse the various sub-clauses of Section-2 of the M.V. Act, the classification of various motor vehicles has been made thereunder with reference to its nature or its weight or its user. "Motor Vehicle" is defined under sub-section (28) of Section 2 which means any mechanically propelled vehicle adapted for

use upon roads whether the power of propulsion is transmitted thereto from an external or internal source. A 'tractor' is defined in sub-section (44) of Section-2 of the M.V. Act which reads thus:

“(44) 'tractor' means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); excludes a road-roller”.

From the above definition, it is clear that a 'tractor' is a motor vehicle which is not itself constructed to carry any load other than the equipment used for the purpose of propulsion. A 'trailer' is defined under sub-section (46) of Section-2 of the M.V. Act which reads thus:

“(46) 'trailer' means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle.”

Hence, the condition precedent for applicability of the definition of 'trailer' is that it must be a vehicle which is drawn or intended to be drawn by a motor vehicle. The definition of 'trailer' specifically excludes a semi-trailer. Sub-section (39) of Section 2 of the M.V. Act defines 'semi-trailer' which reads thus:

“(39) ‘semi-trailer’ means a vehicle not mechanically propelled (other than a trailer), which is intended to be connected to a motor vehicle and which is so constructed that a portion of it is superimposed on, and a part of whose weight is borne by, that motor vehicle.”

Thus, a semi trailer is a vehicle which is not mechanically propelled. In view of the definition of “motor vehicle” defined under sub-section (28) of Section 2 of the M.V. Act, the vehicle must be mechanically propelled adapted for use upon roads. Therefore, a semi-trailer by itself will not be covered by the definition of motor vehicle. Moreover, a trailer as defined in sub-section (46) of Section 2 is not a semi-trailer.

18. A goods carriage is defined in sub-section (14) of Section 2 of the M.V. Act which reads thus:

“(14) ‘goods carriage’ means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.”

Considering the aforesaid definitions, it is very clear that unless a motor vehicle is constructed or adapted for use solely for the

carriage of goods, it will not become a goods carriage. A vehicle which is not so adapted or constructed when used for carriage of goods also becomes a goods carriage.

19. Sub-section (23) and (16) of Section 2 of the M.V. Act are also relevant which define 'medium goods vehicle' and 'heavy goods vehicle' respectively which read thus:

“(23) ‘medium goods vehicle’ means any goods carriage other than a light motor vehicle or a heavy goods vehicle.”

(16) ‘heavy goods vehicle’ means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms.”

On plain reading of the above definitions, a vehicle cannot be termed as a medium goods vehicle or a heavy goods vehicle unless it is a goods carriage within the meaning of sub-section (14) of Section 2 of the M.V. Act. Sub-section (35) of Section 2 of the M.V. Act defines 'public service vehicle' which reads thus:

“(35) ‘public service vehicle’ means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a

maxicab, a motorcab, contract carriage, and stage carriage.”

Thus, a public service vehicle cannot be termed as a goods carriage. A goods carriage cannot become a public service vehicle. Sub-section (33) of Section 2 of the M.V. Act defines ‘private service vehicle’ which reads thus:

“(33) ‘private service vehicle’ means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes.”

Hence, a goods carriage cannot become a private service vehicle. A private service vehicle cannot be termed as a goods carriage. The definition of ‘transport vehicle’, as provided under sub-section (47) of Section 2 of the M.V. Act means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

20. On plain reading of the definition of sub-section (14) of Section-2 of the M.V. Act, a tractor is not included in the definition of goods carriage, as by its very nature, it is not constructed or adapted to carry any load other than the equipments used for the purpose of propulsion.

21. In fact, the issue whether a tractor is a goods carriage arose for consideration before a Bench of three Hon'ble Judges of the Apex Court in the case of **V. Chinnamma** (supra). In paragraph 15 and 16, the Apex Court has dealt with the issue. In categorical terms, it has been held that a tractor by itself is not a goods carriage. However, in paragraph 16, the Apex Court observed that a tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2 (14) of the M.V. Act. The observations made by the Apex Court in paragraphs 15 and 16 are relevant which read thus:

“15. Furthermore, a tractor is not even a goods carriage. The expression “goods carriage” has been defined in Section 2(14) to mean

“any motor vehicle constructed or adapted for use *solely* for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods”

whereas “tractor” has been defined in Section 2(44) to mean

“a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a roadroller”.

“Trailer” has been defined in Section 2(46) to mean

“any vehicle, other than a semi-trailer and a sidecar, drawn or intended to be drawn by a motor vehicle”.

16. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to the market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being

used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in **Asha Rani** and other decisions following the same, as the accident had taken place on 24-11-1991 i.e. much prior to coming into force of the 1994 amendment.

(Underline supplied)

22. Question No (I) framed by the learned Single Judge is whether liability of a person travelling on a mud-guard of a tractor is required to be covered by an insurance policy. The Road Regulations have been framed by the Central Government in exercise of its powers under Section 118 of the M.V. Act. Section 118 of the M.V. Act which is under Chapter-VIII deals with the control of traffic. Section 118 empowers the Central Government to make Regulations for the driving of motor vehicles by a notification in the Official Gazette. Regulation 28 of the Road Regulations which deals with driving of tractors and goods vehicles reads thus:

"28. Driving of tractors and goods vehicles - A driver when driving a tractor shall not carry or allow any person to be carried on the

tractor. A driver of goods carriage shall not carry in the driver's cabin more number of persons than that is mentioned in the Registration Certificate and shall not carry passengers for hire or reward.”

(Underline supplied)

Hence, by virtue of the above Regulation, a driver of a tractor is not permitted to carry or allow any person to be carried on a tractor including on its mud-guard. On this aspect, a decision of the Apex Court in the case of **Shivaraj** (supra) is very relevant. In paragraphs 10 and 11 of the said decision, the Apex Court held thus:

“**10.** The High Court, however, found in favour of Respondent 2 (insurer) that the appellant travelled in the tractor as a passenger which was in breach of the policy condition, for the tractor was insured for agriculture purposes and not for carrying goods. The evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the tractor. Thus, it would follow that the appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person, namely, the driver. As a result, the Insurance Company (Respondent 2) was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court,

in our opinion, is unexceptionable in the fact situation of the present case.

11. At the same time, however, in the facts of the present case the High Court ought to have directed the insurance company to pay the compensation amount to the appellant claimant with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by this Court in *National Insurance Co. Ltd. v. Swaran Singh* (2004) 3 SCC 297, *Mangla Ram v. Oriental Insurance Co. Ltd.*, (2018) 5 SCC 656, *Rani v. National Insurance Co. Ltd.*, (2018) 8 SCC 492 and including *Manuara Khatun v. Rajesh Kumar Singh*, (2017) 4 SCC 796. In other words, the High Court should have partly allowed the appeal preferred by Respondent 2. The appellant may, therefore, succeed in getting relief of direction to Respondent 2 insurance company to pay the compensation amount to the appellant with liberty to recover the same from the tractor owner, Respondent 1.”

(Underline supplied)

23. The Apex Court has reiterated that a tractor could lawfully accommodate only one person, namely, the driver. The Apex Court categorically held that the appellant in the said case had travelled in the tractor as a passenger even though

the tractor could accommodate only one person namely the driver. It was categorically held that the insurer was not liable to indemnify the owner of the tractor for the liability of a passenger travelling on the tractor. Hence, in view of the dictum of the Apex Court referred above, the liability of a person sitting on the mud-guard of a tractor is not required to be covered by statutory insurance policy, as contemplated by sub-section (1) of Section 147 of the M.V. Act.

24. The decision of the Apex Court in the case of *Halappa* (supra) will not help the appellants-claimants. Perusal of the said decision shows that a finding was recorded by the High Court to the effect that the appellant therein (injured) was sitting on the mud-guard of a tractor and therefore, his risk was not covered by the insurer. However, the case of the appellant was that he was not sitting on the mud-guard of a tractor. His case was that when he approached the tractor, the driver was unable to bring it to a halt as a result of which it turned turtle and collided with the appellant-injured resulting in him sustaining grievous injuries. In paragraph 8 of the said decision, the Apex Court held that the insurer has failed to prove its defence that the appellant Halappa was sitting on the

mud-guard of the tractor involved in the accident. Therefore, this decision will not help the appellants.

25. This Court in the case of **Noorulla** (supra) was dealing with the issues which do not arise in this case. The issues which arose were concerning the coverage of the liability regarding injury caused to second driver travelling in a goods vehicle. As far as the decision of the Full Bench in the case of **Bhimavva** (supra) is concerned, in paragraph 43 it was held thus:

“43. The above makes it clear that the insurer shall be 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 proceedings under the Motor Vehicles Act without such liability having been first determined or adjudged under the Workmen's Compensation Act. In the case of an insurance policy which conforms to the bare requirements of Section 147 of the Act, the liability of the Insurance Company shall be limited to the liability arising under the Workmen's Compensation Act but any such liability would be enforceable under the Motor Vehicles Act even without an adjudication under the Workmen's Compensation Act. The minority view to the extent it purports to make a prior adjudication of the

liability under the Workmen's Compensation Act essential for enforcement of the liability is not supported by either the provisions of the Act or any rule of interpretation. With the above observations, We concur with the view taken by the Hon'ble Chief Justice as already indicated earlier”.

26. In the case of *M/S Natwar Parikh* (supra), the issue was of categorization of tractor-trailer for the purposes of the Karnataka Motor Vehicles Taxation Act, 1957. For the purposes of taxation, it was held that tractor-trailer will be a goods carriage. The test applied for the purposes of interpreting the taxing statute was the actual use of the vehicle on the relevant date. This decision is not relevant at all for deciding the issue of statutory insurance.

27. In the case of *The New India Insurance Company –vs- Darshana Devi and others*¹⁶, the deceased was allegedly travelling on the mud-guard of a tractor which was loaded with the goods. The allegation was that as a result of rash and negligent driving on the part of the driver of the tractor, the deceased fell down and succumbed to the injuries sustained. The Tribunal held that the tractor was not used for agricultural

¹⁶ 2008 ACJ 1388 (SC) = (2008) 7 SCC 416

purposes for which it was insured and, therefore, it was held that though the insurer is liable to pay the compensation, the insurer was entitled to recover the same from the insured. In the said case, the High Court allowed the appeal preferred by the insured and therefore, the insurer had approached the Apex Court. From paragraph 13 onwards, the Apex Court has considered its various decisions including the decision rendered in the case of **Asha Rani** (supra). The perusal of the findings recorded in paragraph 13 to 19 of the said decision shows that the Apex Court was of the considered view that the liability of such a passenger was not required to be covered by a policy of insurance. However, the Apex Court declined to exercise its discretionary jurisdiction under Article 136 of the Constitution of India, considering the fact that the deceased was a labourer. With a view to do complete justice to the victim, the Apex Court, in exercise of its extraordinary jurisdiction under Article 142 of the Constitution of India directed the appellant-insurer to satisfy the award and directed that the insurer need not file a separate execution petition against the owner and it can directly recover the amount of compensation from the owner of the vehicle.

28. Now coming to the case of **Asha Rani** (supra) wherein the Bench consisting three Hon'ble Judges of the Apex Court, in paragraphs 9 and 27 held thus:

“9. In *Satpal case* [*New India Assurance Co. v. Satpal Singh*, (2000) 1 SCC 237 : 2000 SCC (Cri) 130] the Court assumed that the provisions of Section 95(1) of the Motor Vehicles Act, 1939 are identical with Section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorized representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorized representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amendment Act of 1994 is examined, particularly Section 46, by which the expression “injury to any person” in the original Act stood substituted by the expression “injury to any person including owner of the goods or his authorized representative carried in the vehicle”, the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994,

even if the widest interpretation is given to the expression "to any person" it will not cover either the owner of the goods or his authorized representative being carried in the vehicle. The objects and reasons of clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorized representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorized representative carried in the vehicle" which was added to the pre-existing expression "injury to any person" is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorized representative being carried in a goods vehicle

when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in *Satpal case* [*New India Assurance Co. v. Satpal Singh*, (2000) 1 SCC 237 : 2000 SCC (Cri) 130] therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of the goods or his authorized representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury.

27. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle 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.”

(underlines supplied)

Thus, liability of the owner of the goods or his authorized representative is required to be covered by a policy only in respect of a goods carriage.

29. A reliance was placed on a decision of the Division Bench of this Court in the case of ***Maruthi and others*** (supra). The said decision arose out of the claim petition filed before the Commissioner under the W.C. Act. The Division Bench of this Court held that the combination of tractor-trailer was a goods carriage. In this case, we are not dealing with situation where a trailer was attached to a tractor. Hence, the said decision is not helpful to the appellants.

30. Reliance is placed by Shri. A.K. Bhat on the notification issued by the Central Government in exercise of its power under sub-section (4) of Section 41 of the M.V. Act which allegedly shows that power tillers and tractors using public roads are transport vehicles. Perusal of Section 41 of the M.V. Act shows that it deals with the procedure as to how the vehicles should be registered. Sub-Section (4) thereof provides that in addition to the other particulars required to be furnished in the certificate of registration, the application made

by the owners for registration shall also specify the type of the motor vehicle, being a type as the Central Government may notify in the Official Gazette. Under the definition of transport vehicle under sub-section (47) of Section 2 of M.V.Act, a tractor is not included. As held by the Apex Court, a tractor by itself is not a goods carriage and therefore, merely on the basis of a notification issued under sub-section (4) of Section 41, one cannot jump to the conclusion that the tractor by itself is a goods carriage as defined in M.V. Act. In a given case, if it is attached to a trailer, the combination may become a goods carriage. Sub section (4) of Section 41 provides for classification only for the purposes of Registration of vehicles. A goods carriage is specifically defined in the M.V. Act which will not include a tractor.

31. The learned counsel Sri. A.K. Bhat relied upon a decision of the Apex Court in the case of ***The Commissioner of Income-tax, Madras –vs- S. Chenniappa Mudaliar***¹⁷. The issue dealt with therein was completely different and it is about the validity of Rule 24 of the Income-Tax (Appellate Tribunal) Rules, 1946. The rules of interpretation of a taxing statute

¹⁷ AIR 1969 SC 1068

cannot be imported for interpretation of Section 147 of M.V. Act.

32. The other judgments submitted by Shri. A.K. Bhat, learned Advocate are totally irrelevant for the purpose of deciding the issue involved in this case. A decision of the Full Bench of this Court in the case of ***North East Karnataka Road Transport Corporation –vs- Smt. Vijayalaxmi and others***¹⁸ deals with an issue of a passenger travelling on the roof of the bus. Hence, the same is not helpful to the claimants. The decision of the Apex Court in the case of ***M.C. Mehta and another –vs- Union of India and others***¹⁹ does not concern the interpretation of Section 147 of the M.V. Act and in fact, it does not deal with the provisions of the M.V. Act at all.

33. Hence, in view of the decisions of the Apex Court in the case of ***V. Chinnamma, Shivaraj and Darshana Devi*** (supra) and the analysis made above, we have no manner of doubt that a liability of a person working either on the ploughing or crushing machines attached to the tractor and who is travelling on the mud-guard of the tractor is not required to be covered by

¹⁸ 2012 (3)KCCR 1772 (FB)

¹⁹ 1987 ACJ 386

the statutory insurance as contemplated under sub-section (1) of Section 147 of the M.V. Act.

QUESTION Nos (ii) AND (iii):

34. The question Nos (ii) and (iii) relate to the persons who are working either on the ploughing or crushing machines or any other instrument/equipment attached to a tractor. The question is whether they can be construed as employees so as to cover their risk statutorily under Section 147 of the M.V. Act. Considering the definition of 'trailer' which we have already quoted above, a ploughing or a crushing machine attached to a tractor is not a trailer. The definition of 'semi-trailer' contained under sub-section (39) of Section 2 makes it very clear that a 'semi-trailer' is not a trailer. A semi-trailer means a vehicle not mechanically propelled (other than a trailer), which is intended to be connected to a motor vehicle and which is so constructed that a portion of it is super-imposed on, and a part of whose weight is borne by, that motor vehicle. Therefore, every instrument including ploughing or crushing machine attached to a tractor will not necessarily be a trailer. At highest, it can be a semi-trailer. Even assuming that the said two categories of equipments are semi-trailers, the same are not the motor vehicle covered by sub-section (28) of Section 2 of the M.V.

Act. Since a semi-trailer is not a motor vehicle, the provisions of Section 147 of the M.V. Act will not apply to it. Chapter-XI deals with the insurance of motor vehicles and, therefore, even the provision of Section 147 of the M.V. Act deals with insurance of motor vehicles. Even assuming that it is an attachment to the tractor, it is not required to be covered by a statutory policy of insurance as such attachments are not motor vehicles. In view of sub-clauses (a) to (c) of clause (i) of proviso to sub-section (1) of Section 147 of the M.V. Act, the liability of employees working on such instruments like ploughing or crushing machine attached to a tractor is not required to be covered by a policy of insurance in respect of a tractor issued in terms of sub-section (1) of Section 147 of the M.V. Act.

35. Therefore, for the foregoing reasons, both the question Nos (ii) and (iii) will have to be answered in the negative. Hence, we answer the reference as under:

- i) Question No (i) is answered in terms of paragraph Nos 23 and 33. Question Nos (ii) and (iii) are answered in the negative;

- ii) Question No (iv) need not be answered separately, in view of our answers to question Nos (i) to (iii), it stands answered;
- iii) All the pending appeals and cross objections arising out of this group of appeals shall be placed before the concerned Benches having roster for consideration and disposal.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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