IN THE COURT OF MOTOR ACCIDENT CLAIMS TRIBUNAL:: ONGOLE.
(BEFORE THE III ADDITIONAL DISTRICT JUDGE'S COURT, ONGOLE)
Present: Sri K.Venkata Ramana Reddy, B.Sc.,B.L.,
III Addl.District Judge, (FTC), Ongole.

Tuesday , the 31st day of July, 2012.

M.V.ORIGINAL PETITION NO.199/2009

Between:

1. *Annangi Peda Anjaiah S/o.Kotaiah, Hindu, aged 47 years,*
2. *Patibandla Aruna W/o.Prabhakar, Hindu, aged 23 years,*
3. *Garikapudi Roja W/o.Ankaiah, Hindu, aged 21 years,*
4. *Nannepogu Mounika W/o.Ashok, Hindu, aged 19 years,*

All are residents of Gajulapalem(V), Maddipadu Mandal, Prakasam District.

… ***Petitioners.***

And

1. B.Venkateswara Rao S/o.China Subbaiah, Hindu, aged 40 years, driver of tractor-trailer, r/o.Maddipadu (V) and Mandal, Prakasam District.
2. Madda Lakshmi Narayana S/o.Raghavaiah, Hindu, aged 40 years, owner of tractor trailer, AP 27 X 3468, D.No.1-71-1, A Maddipadu (V) and Mandal, Prakasam District.
3. Royal Sundaram Alliance Insurance Company Limited., rep.by its Branch Manager, 46, Whites Road, Chennai, Tamilnadu. Cover note No.0653653 valid from 29.4.2008 to 28.4.2009. … ***Respondents.***

This Original petition coming on 26-07-2012 for final hearing before me in the presence of Sri A.Sudhakara Rao, Advocate for petitioners; Sri E.Raja Sekhara Reddy, advocate for 3rd respondent and the respondents 1 and 2 remained ex-parte and upon perusing the Original petition and other material on record and hearing the arguments of the counsel on record and having stood over for consideration till this day, this Court made the following :-

A W A R D

This claim petition has been filed under Section 163-A of Motor Vehicles Act, 1988 with a prayer to pass an award against respondents with joint and several liability directing the them to pay the petitioners compensation of rupees originally for a sum of Rs.3 lacs together with interest at the rate of 12% p.a., from the date of petition till the date of realisation, subsequently, compensation of Rs.4 lacs is claimed by amending the claim petition as per the Order Dt.21.10.2011 in I.A.260/2011.

The material averments of the petition in brief are:-

02. 1st petitioner is the husband, petitioners 2 to 4 are the married daughters of Late Annangi Seshamma(hereinafter referred to, as deceased). The deceased, who was 45 years old, used to earn Rs.3,000/- per month by attending cooly work. On 26.2.2009, deceased and others went for cutting

tobacco leaves and while coming by a tractor-trailer bearing No.AP 27 X 3468 and 3470 with a load of tobacco leaves to unload the same, the driver of said tractor trailer i.e., 1st respondent had driven it in a rash and negligent manner near Nallavagu and lost control over the same and tyre had been burst while coming in high speed, consequently, deceased and others, who were coming in the tractor trailer to unload the tobacco leaves, fell down and they were shifted to Government Hospital, Addanki immediately and deceased lost her breath. A case in Cr.No.31/2009 under Section 337, 304-A IPC., had been registered against the driver of said tractor-trailer i.e., R1 herein. Due to sudden demise of the deceased, petitioners suffered heavy loss and sustained mental agony, hence, they are constrained to file this petition. 1st respondent is the driver, 2nd respondent is the owner-cum-insured and 3rd respondent is the insurer of the said tractor-trailer, hence, all of them are jointly and severally liable to pay compensation to petitioners.

03. Respondents 1 and 2 made their appearance through a counsel, but they remained ex-parte at the stage of filing counter.

(i) 3rd respondent got filed I.A.289/2012 under Section 170 of M.V.Act., seeking permission to contest this claim petition on all or any of the grounds that are available to R2 and the same was allowed by this Tribunal on 4-5-2012.

(ii) 3rd respondent got filed written statement on its behalf denying the petition averments, further asking the petitioners to put to strict proof of the same and thereby opposed the claim of petitioners.

The plea of 3rd respondent as appearing in its counter/written statement in brief is:-

(iii) Deceased and others, who boarded the trailer are gratuitous passengers and the tractor was overloaded. Persons are not permitted to sit on the top of trailer. There is no policy coverage to the deceased and others. Deceased, herself fell down from the top of tobacco load in the trailer and received multiple injuries and died while taking treatment. As per the petition averments, the accident occurred due to burst of the tyre, therefore, there was mechanical defect, hence, the respondent is not liable to pay compensation to petitioners. The driver was not having valid and effective driving licence and crime vehicle was not having any permit to ply on that route. There was no valid policy to the tractor trailer at the time of accident. The matter of accident was not reported by the insured in collusion with the petitioners with a view to cause loss to the respondent-insurance company. Hence, respondent-insurance company is not liable to pay any compensation. Petitioners 2 to 4 are the married daughters of deceased, having their families. Hence, they are not the dependents of the deceased. In any case, the amount of compensation claimed by the petitioners, is highly excessive, arbitrary and out of all proportions, petitioners are not entitled to any amount of compensation. If this Tribunal comes to a conclusion that petitioners are entitled to compensation against 3rd respondent-insurance company, the interest should be restricted at 6% p.a., as per the decision of the Supreme Court, thus, prayed to dismiss the petition against 3rd respondent.

04. Considering the aforesaid pleadings of petitioners and 3rd respondent, the following issues were settled for trial:-

1) **Whether the accident occurred due to rash and negligent driving of the driver of tractor and trailer bearing No.AP 27 X 3468 and AP 27 X 3470 on 26.2.2009 at about 12-00 noon on NH.5 road near Nallavagu bridge, on Addanki-Medarametla Road?**
2) **Whether the petitioners are entitled for compensation for the death of the deceased in Motor vehicle accident? If so, to what extent and from whom they are entitled to receive compensation?**
3) **Whether the age and income of the deceased are correct?**
4) **To what relief?**

05. To substantiate the case of petitioners, petitioners have got filed the affidavit of 1st petitioner-Annangi Pedda Anjaiah apart from the affidavit of Aluri Marthamma in lieu of chief examination and tendered them for cross examination and also exhibitied ‘5’ documents as Exs.A1 to A5.

(i) To substantiate the case of 3rd respondent, it got filed the affidavit of its employee S.Lakshmi Srinivas, in lieu of chief examination and tendered him for cross examination apart from exhibiting two documents as Exs.B1 and B2.

06. Heard the counsel appearing for petitioners. Written arguments filed on behalf of 3rd respondent

ISSUE NO.1:-

07. Pw.1- Annangi Pedda Anjaiah stated in his chief affidavit in support of petition averments that on 26.2.2009, that deceased who was working as cooly in the tractor-trailer of 2nd respondent bearing No.AP 27 X 3468 and 3470, boarded the said trailer along with others after tobacco leaves which had been cut and loaded into the trailer to unload the same and while proceeding, the driver of said tractor had driven it in high speed in a rash and negligent manner near Nallavagu and lost control over the same and in the meanwhile, tyre had been burst, consequently, deceased and others fell down and sustained severe multiple injuries, then they were shifted to Government Hospital, Addanki, but deceased succumbed to those injuries. A case in Cr.No.31/2009 under Section 337 and 304-A IPC., of Addanki P.S., was registered in respect thereto. During the cross examination PW.1 stated in his evidence that he was in another tractor, therefore, he cannot say, where the deceased had been in that tractor-trailer. That part of the evidence of PW.1 during cross examination goes to show that he was not an eyewitness to the accident.

(i) It is the evidence of Aluri Marthamma that while deceased and others were coming by the offending tractor-trailer to unload the tobacco leaves, which were loaded in to said tractor-trailer. 1st respondent had driven it in a rash and negligent manner in high speed and lost control over the vehicle and in the meanwhile, tyre had been burst, consequently, deceased and other coolies fell down and she witnessed the same. Though the 3rd respondent got cross examined PW.2, no suggestion was put to her disputing her presence along with deceased in the tractor-trailer at the time of accident. 3rd respondent got suggested PW.2 that occurrence of said accident was not due to negligence of the driver of the tractor and that deceased herself fell down from the tractor due to her negligence and that deceased did not attend to cooly work on that day and the same was denied by her. RW.1-S.Lakshmi

Srinivasa, an employee of 3rd respondent-insurance company did not dispute the version of petitioners with respect to presence of deceased in that tractor-trailer as cooly to unload tobacco leaves from that tractor and also with respect to rash and negligent act of the driver of the said tractor.

(ii) As this petition is filed under Section 163-A of M.V.Act., claimants are not under an obligations to plead or establish that the death of deceased was due to any wrongful act or negligent act or default of the owner of the vehicle. There is no much dispute that Ex.A1 FIR was registered as Cr.No.31/2009 under Section 337 and 304-A IPC., at Addanki Police station on the report of PW.2-A.Marthamma within few hours after occurrence. The evidence of PW.2 is consistent with her first information report about manner of the accident as appearing in Ex.A1 FIR. It is also not in dispute that Sub Inspector of Police, Addanki Police Station filed charge sheet against the driver of said tractor-trailer i.e., R1 herein in Cr.No.31/2009 under Section 337 and 304-A IPC., and Section 134(a) & (b) r/w.187 of Motor Vehicles Act. Ex.A4 report of MVI established that the occurrence of accident was not due to any mechanical defects of the vehicle. In view of the aforesaid evidence brought on record, it can be concluded safely that said accident occurred due to rash and negligent driving of the tractor-trailer by its driver-1st respondent. Accordingly, this issue is answered in favour of petitioners and against the respondents.

ISSUE NO.3:-

08. The age of deceased is mentioned as 45 years in the claim petition. The age of deceased was also mentioned as 45 years in Ex.A2 inquest report , Ex.A3 post mortem certificate and Ex.A5 charge sheet. PW.1 stated in his chief affidavit the age of deceased as 40 years. However, considering the age of deceased mentioned in inquest report, Post mortem report, it can be concluded safely that the deceased was 45 years old by the date of accident.

(i) PW.1 stated in his chief affidavit consistently in support of petition averments that deceased used to earn Rs.3000/- per month by attending to cooly work. As observed in Issue No.1, deceased had attended cooly work i.e., for cutting tobacco leaves on the date of accident. Considering the age of deceased and also undisputed fact that deceased had been attending to cooly work, the income of deceased can be assessed as Rs.3000/- per month. Accordingly, this issue is answered.

ISSUE NO.2:-

09. There is no much dispute that 1st petitioner is the husband, petitioners 2 to 4 are the married daughters of deceased. In view of the undisputed fact that 1st petitioner is the husband and petitioners 2to 4 are the married daughters, it cannot be said that petitioners are dependents of the deceased. However, considering the fact that deceased and 1st petitioner had been living under one roof and deceased had been serving the 1st petitioner as his wife and in view of established fact that deceased used to earn Rs.3000/- per month and contributing the same for the maintenance of the family and all the petitioners are lost love and affection of deceased, it can be held that petitioners entitled for compensation for causing the death of deceased.

(i) There is no dispute that 1st respondent is the driver, 2nd respondent is the owner-cum-insured and 3rd respondent is the insurer of the offending tractor.

10. It got mentioned in the written arguments filed on behalf of 3rd respondent that R3 issued policy in respect of new tractor with Engine No.S3251B39160, Chasis No.427439 under agricultural policy to the 2nd respondent and that there is no policy coverage to the trailer or to the coolies and unauthorised passengers, as the seating capacity of tractor is only one i.e., driver and that the 2nd respondent violated terms and conditions of policy by allowing the coolies to travel in the said tractor trailer, therefore, 2nd respondent who is the owner of the tractor, is alone liable to pay compensation to petitioners.

(i) The learned counsel appearing for petitioners has submitted that 3rd respondent is liable to pay compensation as the tractor involved in the accident is insured with 3rd respondent and said accident occurred while trailer involved in the accident was being pulled by said tractor. In support of his contention, he relied on the following decisions i.e., (1) **United India**

Insurance Co.Ltd., Kadapa District V. Koduru Bhagyamma and others (2008(2) ALD 273 (DB)), where the trailer in which the deceased was travelling was not insured although it was attached to tractor, which was insured. In the appeal preferred by the Insurance Company, the Hon'ble Division Bench of High Court of Andhra Pradesh observed as " The expression "Motor Vehicle or vehicle" has been defined under Section 2(28) of the Act. Similarly the expressions"Tractor" is defined under Section 2(44) of the Act and the "trailer" is defined under Section 2(46) of the Act. By the definition of "motor vehicle or vehicle" under Section 2(29), the motor vehicles are those vehicles which are mechanically propelled and adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source. Under sub-Section (44) of Section 2 of the Act tractor is defined as a motor vehicle which is not itself constructed to carry any load. Tractor is a special type of motorvehicle which cannot by itself carry any load, but all the same it is a motor vehicle. Sub-Section(46) of Section 2 of the Act are read together, it becomes clear that a trailer is not a motor vehicle, but becomes part of a motor vehicle when it is drawn by a motor vehicle because sub-section (28) of Section 2 of the Act makes a special reference to a trailer and trailer cannot be moved on roads except by a propulsion transmitted thereto from a motor vehicle. Therefore, a trailer attached to a motor vehicle is a part of the motor vehicle itself.(Para5, 6)

On analysis of judgments cited and the provision of law, it is felt that the law has been correctly appreciated by a learned Single Judge of this Court in Gunti Devaiah and others V. Vaka Peddi Reddy and others, 2004 ACJ 1881: 2003(6) ALD(NOC) 24: 2003(6) ALT 300 and the reasons given by him are sufficient to hold that under the Motor Vehicles Act no separate insurance is contemplated for a trailer and when the trailer is attached to the tractor which is insured, it becomes the part of the tractor. (Para 14)."

(2) **New India Assurance Co.Ltd., Vs. Nunna Veera Venkata Satyanarayana(deceased) through L.Rs and others (2012 ACJ 907),** where the injured filed the claim petition against driver of tractor and owner and insurance company of the trailer and insurance company of the trailer contended that the insurance of trailer alone is not sufficient and tractor should also have been insured to fastened the liability. Considering the evidence on record, the Tribunal granted compensation of Rs.4,59,435-00 and made the insurer was jointly and severally liable along with respondents 2 and 3. An appeal preferred by the insurance company in the said referred decision, the Hon'ble High Court having referred the aforesaid decision of the Division

Bench in a case i.e., **United India Insurance Co.Ltd., Kadapa District V. Koduru Bhagyamma and others,** dismissed the appeal confirming the order of Tribunal by observing as

" In the light of the view expressed by the Division Bench in *Koduru Bhagyamma, 2009 ACJ 514(AP)*, the judgments cited by the learned counsel for insurance company are of no avail to the insurance company.

On the other hand, if the reasoning in the said judgment of the Division Bench which is to the ffect that a trailer attached to a motor vehicle is a part of the motor vehicle and that no separate insurance is required for a trailer is accepted, it equally applied to a converse case where a trailer alone is insured. Even otherwise, since I have taken the view that trailer by itself is a motor vehicle and in the instant case, as the trailer was insured, the insurer is obligated to discharge the liability arising out of the policy, notwithstanding that tractor was not insured."

(ii) The facts of the case on hand are identical to that of the case of the aforesaid two referred decisions i.e., **United India Insurance Co.Ltd., Kadapa District V. Koduru Bhagyamma and others;** (2) **New India Assurance Co.Ltd., Vs. Nunna Veera Venkata Satyanarayana(deceased) through L.Rs and others,** In view of settled proposition in the said referred two decisions, 3rd respondent insurance company cannot escape the liability in payment of compensation to petitioners on the ground that there is no policy coverage to the trailor, as the tractor to which the said trailer is attached had been insured and policy was in force by the date of accident.

11. The learned counsel appearing for petitioners, further submitted that Ex.B1 policy permits the use of tractor insured for agricultural purpose and that the deceased died while travelling in the offending tractor in connection with loading and unloading of agricultural produce of the owner of the said tractor i.e., 2nd respondent, therefore, 3rd respondent is liable to pay compensation. In support of his contention, he relied on the following decision i.e., **National Insurance Co.Ltd. Vs., Maruthi and others (2012 ACJ 1408),** where the coolies travelling in tractor trailer to fence stones for storage of water on the land of owner of vehicle along with stones for fencing, sustained injuries when the vehicle fell into ditch. Insurance Company seeks to

avoid its liability on the ground that policy covers risk of own damage, third party and personal accident cover of owner-cum-driver and no additional premium had been paid to cover the risk of other workmen as tractor-trailer is not a goods vehicle. In the claim petition filed by the claimants/workers before the commissioner for workmen compensation, the commissioner passed an order holding that injured claimants were coolies under the owner/insured, therefore, they were under that policy and that work they were engaged in, was in part and parcel of agricultural operations, hence, Insurance company was liable. Against said order, Insurance Company preferred appeal before Hon’ble High Court of Karnataka at Bangalore, but the same was dismissed upholding the order of commissioner by observing as

“ The combination of tractor-trailer is nothing short of a goods carriage. Therefore, when once it is held as goods carriage vehicle, by virture of Section II-1(i) of the fully worded policy and also provisions of Section 147 , the claim of the claimants on hand is covered. The claimants in the present case have rightly approached the Worken’s Commissioner and the Commissioner was justified in holding that the injured claimants were coolies under the owner viz., the insured. In the present case, they were carrying stones for constructing a ridge in the land belonging to the insured so as to store the water. This is nothing but part and parcel of agricultural operations. The claimants were neither gratuitous passengers nor persons who were travelling tractor=trailer for the purpose other than agricultural operations. Looking to the avocation of the claimants, the computation of compensation by the Commissioner is just and proper. Viewed from any angle, we do not find any good ground to interfere with the awards of the Commissioner. Therefore, the claimants in the present case were rightly held as covered under policy, Exh.R2.”

(i) The facts of the case on hand are identical to the facts of the aforesaid referred decision. In this particular case on hand also accident occurred while deceased attending the agricultural work of the owner of tractor-trailer i.e., 2nd respondent in loading and unloading the tobacco leaves. Ex.B1 policy covers the risk of deceased being the worker attending agricultural work of R2 who is the owner of offending tractor-trailer, therefore, 3rd respondent cannot escape its liability on the ground that no extra premium was paid covering the risk of workers by the 2nd respondent. Hence, the contention of 3rd respondent cannot be accepted in that regard.

(ii) Therefore, 1st respondent being the driver, 2nd respondent being the owner-cum-insured and 3rd respondent being the insurer of the offending tractor-trailer are jointly and severally liable to pay compensation to petitioners for causing the death of deceased.

12. As the petitioners 2 to 4 are married daughters and living with their respective husbands at their in-laws and 1st petitioner who is the husband of deceased, is elder to the deceased, the age of 1st petitioner shall be taken into consideration for calculating the quantum of compensation payable in this case. As observed in Issue No.3, the monthly income of deceased was Rs.3,000/- per month. On calculation, the annual income of deceased comes to Rs.36,000/-; 1/3rd of said annual income of deceased shall be deducted towards her personal and living expenses while calculating the compensation payable in this case. 2/3rd of annual income of deceased comes to Rs.24,000/-. As the 1st petitioner, who is the husband of deceased claimed himself as 47 years in the claim petition. Multiplier '13' applicable to a person in the age group of 45-50 years as per II schedule of M.V.Act., can be applied in this case. On multiplication of the aforesaid annual loss, due to the death of deceased i.e., 24,000/- by multiplier '13', the total loss of income due to death of deceased comes to Rs.3,12,000/-. Apart from the said sum of Rs.3,12,000/-, petitioners are entitled to a sum of Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss to estate. 1st petitioner being the husband of deceased, is entitled further to another sum of Rs.5,000/- towards loss of consortium. Out of said compensation amount, petitioners 2 to 4 are entitled to a sum of Rs.50,000/- each and 1st petitioner is entitled to a sum of Rs.1,71,500/-(Rs.1,66,500-00 + Rs.5,000-00). Respondents 1 to 3are jointly and severally liable to pay the said compensation to petitioners together with accrued interest thereon at the rate of 9% p.a., from the date of petition till the date of deposit before this Tribunal. Accordingly, this issue is answered.

ISSUE NO.4:-

13. In view of finding on Issues 1 to 3 as mentioned above, this claim petition shall be allowed in part with proportionate costs awarding compensation of Rs.1,71,500-00 (Rs.1,66,500-00+ Rs.5,000-00) to 1st petitioner, Rs.50,000-00 to each of the petitioners 2 to 4 payable by respondents 1 to 3 together with accrued interest thereon at the rate of 9 per cent per annum from the date of petition till the date of deposit with joint and several liability. Petition in respect of the rest of the claim of petitioners, shall be dismissed without costs. Respondents 1 to 3 shall be directed to deposit the aforesaid compensation amount together with accrued interest thereon and costs of the petition within 30 days from this date before this tribunal and on such deposit, petitioners 1 to 4 are entitled to withdraw 50% of the compensation amount together with accrued interest thereon and entire costs of the petition. The remaining compensation amount and accrued interest thereon payable to petitioners 1 to 4 shall be deposited in any Nationalised Bank, Ongole branch for a period of three years.

14. In the result, this claim petition is allowed in part with proportionate costs awarding compensation of Rs.1,71,500-00 (Rs.1,66,500-00+ Rs.5,000-00) to 1st petitioner, Rs.50,000-00 to each of the petitioners 2 to 4 payable by respondents 1 to 3 together with accrued interest thereon at the rate of 9 per cent per annum from the date of petition till the date of deposit with joint and several liability. Petition in respect of the rest of the claim of petitioners, is dismissed without costs. Respondents 1 to 3 are directed to deposit the aforesaid compensation amount together with accrued interest thereon and costs of the petition within 30 days from this date before this tribunal and on such deposit, petitioners 1 to 4 are entitled to withdraw 50% of the compensation amount together with accrued interest thereon and entire costs of the petition. The remaining compensation amount and accrued interest thereon payable to petitioners 1 to 4 shall be deposited in any Nationalised Bank, Ongole branch for a period of three years. Advocate fee is fixed in this petition at Rs.3,000/-(Rupees three thousand only).

(Dictated to the Personal Assistant, transcribed by him, corrected and pronounced by me in open Court, this the 31st day of July, 2012.)

CHAIRMAN, M.A.C.T.-cum-
III ADDL.DISTRICT JUDGE,(F.T.C),ONGOLE.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR PETITIONER:-
PW.1:Annangi Peda Anjaiah
Executive Legal
PW.2:Aluri Marthamma

FOR RESPONDENTS:
Rw.1:S.Lakshmi Srinivas,

//DOCUMENTS MARKED//

FOR PETITIONERs:

Ex.A1:PW.1:	:	Attested Photostat copy of FIR in Cr.No.31/2009 of Addanki PS
Ex.A2:PW.1:	:	Attested Photostat copy of inquest report
Ex.A3:PW.1:	:	Attested Photostat copy of post mortem certificate of deceased
Ex.A4:PW.1:	:	Attested Photostat copy of M.V.I. report
Ex.A5:PW.1:	:	Attested Photostat copy of charge sheet in Cr.No.31/09 of Addanki Police Station

//DOCUMENTS MARKED ON BEHALF OF THE RESPONDENTS//

Ex.B1:RW.1:	:	Certified true copy of certificate-cum-policy schedule
Ex.B2:RW.2:	:	Certified copy of B-Register of Motor vehicle.

III Addl.District Judge,
Ongole.