

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.566 of 2005

JUDGMENT:

This civil miscellaneous appeal is filed under Section 30 of the Workmen's Compensation Act, challenging the order dated 05.11.2003 in W.C. Case No.65 of 2001 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada (for short, the Commissioner), wherein and whereby an amount of Rs.1,47,795/- was awarded as against the claim of Rs.2,00,000/-.

2. The parties will be hereinafter referred to as they are arrayed before the Commissioner in W.C. Case, for the sake of convenience.

3. The facts leading to filing of the present appeal are briefly as follows: The applicant No.1 is the wife, and applicant Nos.2 and 3 are the children, of Mudiyalu Sekhara Reddy. Sekhara Reddy was appointed as cleaner on the lorry bearing No.AP 16V 1467 belongs to opposite party No.1. On 12.6.2000, Sekhara Reddy was proceeding to Visakhapatnam from Vijayawada on the lorry bearing No.AP 16V 1467 as cleaner. When the lorry reached Yelugubanda meraka, the driver of the lorry bearing No.AP 16V 1467 had driven the same in a rash and negligent manner and dashed against a trailer. Due to the accident, Sekhara Reddy (hereafter referred to as, the deceased) died on the spot. The Station House Officer, Rajanagaram Police Station, registered a case in Crime No.87 of 2000 under Section 304A IPC against the driver of the lorry bearing No.AP 16V 1467. By the time of the accident, the deceased was aged about 35 years and used to earn Rs.3,000/- per month towards salary. The lorry bearing No.AP 16V 1467, which belongs to opposite party No.1, was insured with opposite party No.2 vide Insurance Policy No.02745/99 with effect from 01.7.1999 to 30.6.2000. Therefore, the opposite party Nos.1 and 2 are jointly and severally liable to pay the compensation to the applicants.

4. The opposite party No.1 filed counter admitting that by the time of the accident the deceased was working as cleaner on his lorry on a monthly salary of Rs.3,000/- per month. The lorry bearing No.AP 16V 1467 was insured with opposite party No.2 vide Policy No.02745/99 and certificate No.0357072, with effect from 01.7.1999 to 30.6.2000. Therefore, opposite party No.2 alone is liable to pay compensation, if any, to the applicants.

5. The opposite party No.2 filed counter denying the averments made in the application including the age and avocation of the deceased. It is the duty of the opposite party No.1 to establish that by the time of the accident the lorry was validly insured with it and the driver of the lorry was having valid and effective driving licence. The amount of compensation claimed by the applicants is on higher side. Hence, the application may be dismissed.

6. During the course of enquiry, on behalf of the applicants, A.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. Opposite party No.1 himself was examined as B.W.1. On behalf of opposite party No.2, B.W.2 was examined and Exs.B1 and B2 were marked.

7. On appraising the oral, documentary evidence and other material available on record, the learned Commissioner arrived at a conclusion that the applicants are entitled for compensation amount of Rs.1,47,795/- directing opposite party No.1 to pay the compensation. The application against opposite party No.2 was dismissed. Feeling aggrieved by the order of the learned Commissioner, the applicants preferred the present appeal.

8. The learned counsel for the applicants submitted that the learned Commissioner ought to have fastened the liability on opposite party No.2 even though the driving licence of the driver of the lorry was expired by the date of the accident. He further submitted that the learned Commissioner has not considered the material available on

record in right perspective and dismissed the application against opposite party No.2 on erroneous grounds. The learned counsel for the opposite party No.2 submitted the learned Commissioner has considered various aspects and rightly dismissed the application against opposite party No.2. He further submitted that opposite party No.1 violated the terms and conditions of the policy; therefore, there is no statutory or contractual obligation on the part of opposite party No.2 to pay the compensation to the applicants.

9. Now, the point that arises for consideration in this appeal is:

Whether the learned Commissioner has committed any error while dismissing the application against opposite party No.2 i.e., the Insurance Company?

Point:

11. The following facts can be culled out from the pleadings and evidence available on record. By the time of the death, the deceased was working as cleaner on the lorry bearing No.AP 16V 1467 belongs to opposite party No.1. The deceased died out of and during the course of the employment. The testimony of B.W.1 (owner of the lorry) clearly reveals that the deceased is none other than the own brother of the driver of the lorry. In the cross-examination, B.W.1 denied the suggestion that the driver of the lorry was not having valid driving licence as on the date of the accident. The testimony of B.W.2 clearly reveals that the lorry bearing No.AP 16V 1467 was insured with opposite party No.2 under Ex.B1 Insurance Policy as on the date of the accident.

12. The crucial question that falls for consideration is whether the driver of the lorry was having valid and effective driving licence as on the date of the accident. The oral testimony of A.W.2 coupled with Ex.B2 clearly reveals that the driving licence obtained by the driver of the lorry was in force with effect from 16.5.1994 to 15.5.1997. A perusal of the record clearly reveals that the driver of the lorry had

renewed his licence upto 15.5.2000. The driver of the lorry once again renewed his licence with effect from 12.7.2000 to 11.7.2003. The material available on record clearly reveals that during the period from 15.5.2000 to 12.7.2000, the driver of the lorry was not having valid driving licence. Admittedly, the accident occurred on 12.6.2000. The material placed before the court clinchingly establishes that the driver of the lorry was not having valid driving licence to drive lorry bearing No.AP 16V 1467 as on the date of the accident.

13. It is needless to say that any individual having driving licence is entitled to renew the same within 30 days from the date of its expiry. If the licence is renewed within the grace period of 30 days, the same would be treated as in force from the date of its expiry. Admittedly the licence of the driver of the crime vehicle was renewed on 12.7.2000; more than 30 days after its expiry. Therefore, the renewal of the licence will come into effect from 12.7.2000 only. This clearly demonstrates that as on the date of the accident, the driver of the crime vehicle was not having valid and effective driving licence. The fact remains that opposite party No.1 allowed the driver of the lorry to drive the same knowing fully well that he was not having valid driving licence. As observed earlier, the deceased is none other than the own brother of the driver of the lorry bearing No.AP 16V 1467. In all probabilities, the deceased might have known that his brother was not having valid driving licence to drive the lorry as on the date of the accident. Knowing fully well all these facts, the deceased himself invited the risk. The opposite party No.1 has violated the terms and conditions of insurance policy; therefore, there is no statutory or contractual obligation on the part of opposite party No.2 to indemnify the liability of opposite party No.1. Viewed from this angle also, there is no justification to fasten the liability on the opposite party No.2 i.e., the Insurance Company. The learned Commissioner has considered all these aspects in right perspective and dismissed the application against opposite party No.2. I am fully agreeing with the findings

recorded by the learned Commissioner.

14. Having regard to the facts and circumstances of the case, I am of the considered view that there are no reasons much less cogent and valid reasons to interfere with the well-considered order of the learned Commissioner. Viewed from any angle, the appeal lacks merits and bona fides. Accordingly, the point is answered.

15. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous applications, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 27.7.2015
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