

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

Civil Miscellaneous Appeal No.1029 OF 2005

JUDGMENT:

1 This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, challenging the Order, dated 10.06.2003 passed in W.C.No.12 of 2000 on the file of the Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour, Ranga Reddy District, Circle – I wherein and whereby an amount of Rs.2,11,914/- was awarded towards compensation to the applicants as against the claim of Rs.2,50,000/- .

2 For the sake of convenience, the parties to this miscellaneous appeal, will hereinafter, be referred to as they are arrayed before the lower authority.

3 The facts that led to the filing of the present appeal, briefly, are as follows:

4 One T. Krishna was engaged as driver on the vehicle bearing No.A.P.-11-U-3141, which belongs to the Opposite Party No.1. On 22/23.03.1999 Krishna (hereinafter referred to as 'the deceased') died in a motor vehicle accident out of and during the course of employment. The Inspector of Police, Dundigal registered a case in Cr.No.51 of 1999 against the deceased under Section 304-A of IPC. By the time of accident, the deceased was aged about 23 years and used to earn Rs.2,000/- p.m. The applicants who are the parents of the deceased are dependents on the income of the deceased. The crime vehicle bearing No.AP 11 U 3141 which belongs to the Opposite Party No.1 was insured with the Opposite Party No.2 as on the date of accident. Therefore, Opposite Party Nos.1 and 2 are jointly and severally liable to pay compensation to the applicants.

5 Opposite Party No.1 remained ex parte. Opposite Party No.2 filed counter denying the averments made in the petition including the manner of accident, age and income of the deceased inter *alia* contended that the petition is not maintainable under sections 10 and 22 of the W.C. Act as there is no employer and employee relationship between the Opposite Party No.1 and the deceased. The applicants are not entitled to claim compensation unless it is established that the deceased was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the applicants is excessive and exorbitant. Hence the petition may be dismissed.

6 Basing on the above pleadings, the learned Commissioner framed the following issues for trial.

- a. Whether the deceased workman died in an accident on intervening night of 22/23.03.1999 that arose out of and during the course of his employment under O.P.No.1 as goods vehicle driver?
- b. If so, to what quantum of compensation the applicants are entitled for? And who is liable to pay?

7 During the course of enquiry, on behalf of the applicants A.W.1 was examined and Exs.A.1 to A.4 were marked. On behalf of the Opposite Parties, R.W.1 was examined but no document was marked.

8 On appreciating the oral, documentary evidence and other material available on record, the learned Commissioner arrived at a conclusion that the deceased died out of and during the course of employment and allowed the petition in part by awarding an amount of Rs.2,11,914/- towards compensation. Feeling aggrieved by the judgment and award of the learned Commissioner, the Opposite Party No.2 preferred this appeal.

9 The contention of the learned counsel for the Opposite Party

No.2 is that there is no employer and employee relationship between the Opposite Party No.1 and the deceased. He further submitted that the compensation awarded by the learned Commissioner is on higher side. He further submitted that the learned Commissioner failed to appreciate that the deceased was not having valid and effective driving licence as on the date of accident to drive the crime vehicle, therefore, there is no contractual or statutory obligation on the part of the Opposite Party No.2 to indemnify the liability of the Opposite Party No.1

10 *Per contra*, the learned counsel for the applicants submitted that the finding of the learned Commissioner that by the date of accident, the deceased was working as an employee of the Opposite Party No.1 is supported by oral and documentary evidence. He further submitted that the learned Commissioner awarded compensation basing on the G.Os and notifications issued by the Government under Minimum Wages Act from time to time. He further submitted that the findings of the lower Authority that the deceased was having valid and effective driving licence to drive the vehicle in question is supported by oral and documentary evidence available on record. He further submitted that there are no grounds much less valid grounds to interfere with the orders passed by the learned Commissioner.

11 Basing on the above rival contentions, the substantial questions that emerge for determination in this appeal are as follows:

- i) Whether the deceased died out of and during the course of employment or not?
- ii) Whether the Commissioner has committed error while awarding compensation?
- iii) Whether the Opposite Party No.1 had violated the terms and conditions of the insurance policy so as to

absolve the liability of the Opposite Party No.2?

Point No.1:

12 To substantiate the case, the father of the deceased was examined as A.W.1 and got marked Exs.A.1 to A.4. To demolish the stand of the applicants, R.w.1 was examined on behalf of the Opposite Party No.2. As per the testimony of A.W.1, on the date of accident, his son was engaged as driver on the TATA vehicle AP 11 U 3141, which belongs to the Opposite Party No.1. His testimony further reveals that his son died on 22/23.03.1999 in a motor vehicles accident. The Opposite Party No.2 has taken a specific plea in the counter that by the date of accident, the deceased was not working as an employee under the control of Opposite Party No.1. There is no whisper in the chief examination of R.W.1 that by the date of accident, the deceased was not working as driver on the vehicle bearing No.AP-11-U-3141. As per the recitals of Ex.A.1 by the time of accident the deceased had driven the vehicle bearing No.AP-11-U-3141. As per the recitals of Ex.A.4 – post-mortem examination report, the deceased died due to the injuries sustained by him in the motor vehicles accident that occurred on 22/23.03.1999. The oral and documentary evidence produced before the learned Commissioner clinchingly establishes that by the time of his death, the deceased was working as driver on the vehicle bearing No.AP-11-U-3141, which belongs to the Opposite Party No.1. The material available on record further establishes that the deceased died out of and during the course of employment. The learned Commissioner has considered the oral and documentary evidence available on record in right perspective and arrived at a conclusion that the deceased died out of and during the course of employment. There are no grounds much less valid grounds to upset the findings recorded by the learned Commissioner on this

aspect. Hence this point is answered in favour of the applicants and against the Opposite Party No.2.

Point No.2:

13 A perusal of Ex.A.2 clearly reveals that by the time of accident, the deceased was having driving licence to drive Light Motor Vehicle. The oral testimony of P.W.1 that his son was a driver is supported by Ex.A.2. Even as per the oral testimony of R.W.1, the deceased was driver by profession. Except the self-serving testimony of A.W.1, there is no other convincing evidence to prove the income of the deceased. In the absence of any documentary evidence, the learned Commissioner can determine the wages of a workman basing on the orders and notifications issued by the Government under Minimum Wages Act, from time to time. The learned Commissioner assessed the wages of the deceased as Rs.1914/- basing on G.O.Ms.No.71 of W.D.C.W & L Department, dated 16.04.1991. There is no dispute with regard to the age of the deceased as on the date of accident. The Commissioner has taken the relevant factor as 219.95 as the deceased was aged about 23 years by the date of accident. By following the procedure contemplated under the W.C. Act, the learned Commissioner assessed the compensation to which the applicants are entitled as Rs.2,10,492/-. The learned Commissioner awarded Rs.422/- towards stamp duty and Rs.1,000/- towards advocate fee totalling to Rs.2,11,914/- as compensation to the applicants for the death of the deceased. In the light of the foregoing discussion, I am unable to accede to the contention of the learned counsel for the Opposite Party No.2 that the amount of compensation awarded by the learned Commissioner is on higher side. In fact, the learned Commissioner has awarded just and reasonable compensation.

Point No.3:

14 The Opposite Party No.2 has taken a specific plea in the counter that the deceased was not having valid and effective driving licence as on the date of accident. R.W.1 deposed that the deceased was not having valid and effective driving licence in view of the report submitted by the investigator. In the cross examination, in unequivocal terms, R.W.1 deposed that the report of the investigator was not produced before the learned Commissioner. As per the testimony of R.W.1, the deceased was having driving licence to drive Light Motor Vehicle as on the date of accident. His testimony further reveals that the driving licence of the deceased was altered from LMV Non-Transport to LMV-Transport with effect from 24.07.1999 to 23.07.2002. The oral testimony of R.W.1 coupled with Ex.A.2 reveals that the deceased was having driving licence to drive the Light Motor Vehicle Non-Transport. The material placed before the learned Commissioner as well as this Court clinchingly establishes that the vehicle in question is the Light Motor Vehicle. The crucial question that falls for consideration is whether the driving of a transport LMV-Transport by a driver having a licence to drive the LMV Non-Transport amounts to fundamental breach of the terms and conditions of the insurance policy so as to absolve the liability of the insurance company or not. In order to resolve the issue, this court is placing reliance on the following decisions.

S.Iyyapan Vs. United India Insurance Co. ^[1] wherein the Hon'ble apex Court held as follows:

17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action *inter alia* on the grounds, namely,

- (i) the vehicle was not driven by a named person,
- (ii) it was being driven by a person who was not having a duly

granted licence, and

(iii) person driving the vehicle was disqualified to hold and obtain a driving licence.

Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment⁵ is, therefore, liable to be set aside.

19. We, therefore, allow this appeal, set aside the impugned judgment of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. However, there shall be no order as to costs.

Kulwant Singh and others Vs. Oriental Insurance Co.

Ltd ^[2] wherein the Hon'ble apex Court held as follows:

10. In S. Iyyapan (supra), the question was whether the driver who had a licence to drive 'light motor vehicle' could drive 'light motor vehicle' used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed:

"19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside."

No contrary view has been brought to our notice.

11. Accordingly, we are of the view that there was no breach of

any condition of insurance policy, in the present case, entitling the Insurance Company to recovery rights.

15 As per the principle laid down in the above cases, non-holding of badge by itself would not amount to fundamental breach of terms and conditions of the policy so as to absolve the liability of the insurance company. The facts of the cases cited supra are almost identical to the facts of the cases on hand. Absolutely there is no material on record to establish that the Opposite Party No.1 had violated the terms and conditions of the policy so as to absolve the liability of the Opposite Party No.2.

16 The policy was in force as on the date of accident. Therefore, Opposite Party Nos.1 and 2 are jointly and severally liable to pay compensation to the applicants. The learned Commissioner has assigned cogent and valid reasons to his findings. There are no grounds much less valid grounds to interfere with the well considered order passed by the learned Commissioner. The appeal lacks merits and bonafides and hence the same is liable to be dismissed.

17 In the result, the appeal is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this miscellaneous appeal, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 11th September, 2015

Kvsn

[\[1\]](#) (2013) 7 SCC 62

[\[2\]](#) 2014 ACJ 2873