

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.40 of 2010

JUDGMENT:-

This Civil Miscellaneous Appeal, under Section 30 of the Workmen's Compensation Act, 1923 presently known as Employees' Compensation Act, 1923, ('the Act', for brevity), by the appellant/second opposite party is directed against the order dated 24.08.2009 of the learned Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour – I, Hyderabad passed in W.C.No.184 of 2007.

2. I have heard the submissions of the learned counsel for the appellant/second opposite party ('the second opposite party', for brevity) and the learned counsel for the respondents 1 to 3/applicants ('the applicants', for brevity). The fourth respondent is stated to be not a necessary party. None appeared for the fifth respondent/first opposite party, though the said party was served with the notice. I have perused the material record.

3. The applicants, who are the wife, the parents and the other dependants of the deceased – V. Moina, filed a WC case claiming compensation for the loss sustained by them due to the untimely death of the said deceased on account of the injuries sustained by him in a motor vehicle accident that had occurred on 11.06.2007 while the deceased was driving an auto bearing registration number AP 28 W 5795 belonging to the first opposite party/insured and insured with the second opposite party/insurer. The first opposite party had remained *ex parte* before the learned Commissioner. The second opposite party had resisted the claim of the applicants by raising various contentions in its counter.

3.1 At trial, the first applicant and a supporting witness were examined

as AWs1 and 2 and exhibits A1 to A3 were marked. RWs1 and 2 were examined and exhibit B1 – the copy of the insurance policy was marked on the side of the second opposite party.

3.2 On merits, the learned Commissioner had allowed the claim petition of the applicants. The operative portion of the said order reads as under:-

“In the result, it is held that the 1st and 2nd opposite parties are jointly and severally liable to pay compensation to the dependants of the deceased workman late Sri V.Moina who died due to the injuries sustained in the accident that occurred on 11.06.2007 during the course and out of his employment as a driver on the insured auto bearing No. AP 28 W 5795, in the employment of the 1st opp. party. The compensation amounting to Rs.4,04,998/- together with stamp fee of Rs.810/- and advocate fee of Rs.500/- totaling to Rs.4,06,308/- (Rupees four lakhs six thousand three hundred and eighty only) shall be paid by the 1st and 2nd opp. parties to the dependants of the deceased workman. Both the opposite parties are directed to deposit the said total amount by means of a demand draft drawn on any Nationalized Bank in favour of the Commissioner for Workmen’s Compensation and Assistant Commissioner of Labour – I, Hyderabad, within (30) days from the date of receipt of copy of this order, failing which the dependants of the deceased workman are entitled for interest @ 12% p.a. on the amount of compensation from the date of default.”

4. Aggrieved of the said orders, the second opposite party/Insurance Company is before this Court as appellant.

5. The learned counsel for the appellant/second opposite party would submit as under: “The deceased did not hold any license, muchless valid driving license, which authorized him to drive the auto at the relevant time and that the fifth respondent, who is the owner of the auto, having handed over the auto to the deceased who was not having valid and effective driving license to drive the same, had willfully violated the terms and conditions of the policy and the provisions of the Motor Vehicles Act, 1988 and the Rules made there under. Therefore, the preonappellant/insurance company is absolved from its liability. The

learned Commissioner had grossly erred in saddling the insurance company with liability to pay the compensation. Hence the appeal may be allowed and the order impugned may be set aside.”

6. On the other hand, the learned counsel for the respondents/applicants, while supporting the order of the learned Commissioner, had submitted as follows: “The applicants had established that the deceased driver was having valid and effective driving license which authorized him to drive the auto and that the said license was lost at the time of the accident. The learned Commissioner had framed the necessary issues and had answered the issues in favour of the applicants after accurately considering the facts and appreciating the evidence in proper perspective. No questions of law, muchless substantial questions of law, are involved in the appeal. The well-reasoned order of the learned Commissioner does not call for any interference by this Court. Hence, the appeal, which is devoid of merit, is liable to be dismissed.”

7. Now the points that arise for determination in this appeal are:-

1. *Whether the deceased died on account of injuries sustained by him in an accident that had occurred on 11.06.2007 while he was driving the auto bearing registration No. AP 28 W 5795 in the course and out of his employment as driver under the first opposite party?*
2. *Whether the deceased held a valid and effective driving license to drive the auto at the time of accident?*
3. *Whether the opposite parties are liable to pay the compensation to the applicants?*
4. *Whether the impugned order is unsustainable in the facts and circumstances urged by the insurance company?*
5. *To what relief?*

8. Points:-

8.1 The case of the applicants is that the deceased was employed as a driver under the first opposite party on his auto bearing registration No. AP 28 W 5795 and that on 11.06.2007, while the deceased was driving the said auto, a jeep bearing registration No. AP 11 R 5043 had dashed against the said auto and that the deceased had succumbed to the injuries on the spot and that, therefore, the opposite parties are liable to pay the compensation.

8.2 The first applicant was examined as **AW1**. She is, admittedly, not an eye-witness to the accident. In her evidence, exhibit A1 – the certified copy of the FIR dated 12.06.2007 in Crime No.157 of 2007, exhibit A2 – the certified copy of the inquest report and exhibit A3 – the certified copy of the postmortem examination report of the deceased were marked. In her cross-examination, she had admitted that she did not file any document to show that her deceased husband worked under the first opposite party as a driver and that she did not file the driving license of her deceased husband. She had denied the suggestion that her husband did not possess valid and effective driving license to drive the auto as on the date of accident. She had further denied the suggestion that no accident had taken place. To corroborate her version, one V. Dhenra was examined as **AW2**. In his affidavit filed in lieu of examination in chief, he had stated that he was working as an auto driver and that he acted as panch witness at the time of inquest of the deceased. He had further testified that he knows the deceased who belongs to his village and that the deceased used to work as driver on the auto belonging to the first opposite party and that the deceased possessed a valid and effective driving license and that about one year back, the deceased died in an accident that had occurred due to the rash and negligent driving of the driver of a jeep. In his cross-examination, he had maintained his stand, but, admitted that he had not exhibited any document in support of his

statements in the evidence. He further denied the suggestions that he was not present at the time of inquest panchanama and that he was deposing false evidence and that he has not seen the accident. The appellant/Insurance Company has examined its Assistant Manager as **RW1**. He reiterated in his examination in chief, the pleaded case of the 2nd opposite party/Insurance Company. He deposed that the applicants did not file any document supporting their case in regard to the age, wage, and employment of the deceased and that the applicants also did not file the driving license of the deceased to show that he held a licence which authorized him to drive the auto. He had reiterated that the occurrence of the accident was not immediately informed to the appellant/second opposite party and that the mandatory provisions of the policy were violated and that the insurance company is not liable to pay any compensation. The insurance company summoned the owner of the auto/first opposite party and examined him as **RW2**. He had deposed that he knows that the deceased Moina had met with an accident and that a case is filed in the Court. In his cross-examination, he had admitted that he did not file any document to show that he is the owner of the auto and that the deceased driver of the auto was having valid and effective driving license to drive the auto. He denied the suggestion that he has handed over the auto to the deceased without verifying his driving license and as such he is liable to pay compensation and that the insurance company is not liable. He further stated that the deceased worked under him as driver for six months before his death in the accident and that his auto was seized by the finance company along with the RC book and that he used to pay Rs.4,000/- per month to the deceased.

8.3 Now coming to the aspect as to whether the deceased held valid and effective driving license or not, the evidence brought on record would show that not only the wife of the deceased, but also AW2, who is one of

the inquest panchas, asserted that the deceased held a valid and effective driving license which authorized him to drive the auto at the relevant time. RW2, who is the owner of the auto and also the employer of the deceased, had stated that he has entrusted his auto to the deceased after verifying his driving licence. Further, the first applicant had also stated that the driving license of her husband was lost at the time of accident. The evidence brought on record, in the well-considered view of this Court, is sufficient to come to a safe conclusion that the deceased held a valid and effective driving licence and that it might have been lost during the course of the accident as contended by the applicants, as the enquiry in a compensation claim of this kind is summary in nature and the standard of proof is preponderance of probabilities. Further, the evidence discloses that the accident took place when a jeep had dashed against the auto and that the deceased was not responsible for the accident though at that time the deceased was driving the auto out of and during the course of his employment as a driver under the first opposite party.

9. Having analytically examined the facts and the evidence brought on record, this Court finds that the learned Commissioner is justified in holding that the applicants are entitled to claim compensation. It is not in dispute that the first opposite party is the insured and that the auto was insured under the original of exhibit B1-Insurance Policy and that the said policy was valid and was subsisting at the time of accident and covered the risk of the driver of the auto.

10. Viewed thus, this Court finds no error in the order of the learned Commissioner calling for interference and that no questions of law, muchless substantial questions of law, are involved in this appeal and that the appeal is devoid of merit and is liable to be dismissed.

11. In the result, the appeal is dismissed. There shall be no order as to

costs.

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

M. Seetharama Murthi, J

02nd September, 2015
Bvv