THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.67 OF 2006

JUDGMENT:

1 This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, challenging the Order, dated 30.08.2004 passed in W.C.No.21 of 2004 on the file of the Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour Kadapa.

2 For the sake of convenience, the parties to this miscellaneous appeal, would 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 The applicants filed an application under Section 22 of the Workmen's Compensation Act claiming compensation of Rs.5.00 lakhs from the Opposite Parties for the death of one Papireddy Narayanareddy in a road accident that occurred on 28.02.2004 out of and during the course of employment while driving the Jeep bearing No.AP-04-6840. The Opposite Party No.1 engaged the said Narayana Reddy (hereinafter referred to as 'the deceased') as driver on the Jeep bearing No.AP-04-6840 which was insured with the Opposite Party No.2 with effect from 20.06.2003 to 19.06.2004. As on the date of accident, the deceased was aged 25 years and used to earn Rs.5,000/- p.m. First petitioner is father and the second petitioner the mother of the said Papireddy Narayanareddy and they are dependants on the income of the deceased. Therefore, the Opposite Party Nos.1 and 2 are jointly and severally liable to pay compensation to the applicants. Hence they filed the petition seeking compensation of Rs.5.00 lakhs with interest at 18% p.a.

5 Opposite Party No.1 remained ex *parte*. Opposite Party No.2 filed counter denying all the averments made in the petition including the manner of accident, age and income of the deceased. There was no employer and employee relationship between the Opposite Party No.1 and the deceased as on 28.02.2004. The applicants are not entitled to claim compensation from this Opposite Party unless they prove 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 as many as five issues for enquiry.

7 During the course of enquiry, on behalf of the applicants, A.W.1 was examined and Exs.A.1 toA.5 were marked. On behalf of the Opposite Party No.2, R.W.1 was examined and the copy of the insurance policy was marked as Ex.B.1.

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 in course of employment and allowed the petition in part by awarding compensation of Rs.3,35,614/- together with interest @ 9% p.a. from the date of accident i.e. 28.02.2004 till the date of realisation, besides stamp duty of Rs.671/-. Feeling aggrieved by the order of the learned Commissioner for Workmen's Compensation, the Opposite Party No.2 - insurer preferred the present appeal.

9 The contention of the learned counsel for the Opposite Party No.2 is three fold. **1)** The learned Commissioner failed to consider that Ex.B.1- insurance policy does not cover the risk of driver as no extra premium is paid. **2)** The liability of the Opposite Party No.2 is

only to the extent of Rs.2.00 lakhs even if Ex.B1 policy covers the risk of driver, and **3)** The learned Commissioner failed to consider that the Opposite Party No.1 had violated the terms and conditions of the insurance policy by entrusting the Jeep to the deceased who was not having valid and effective driving licence thereby Opposite Party No.2 is exonerated from its liability, if any, automatically.

10 *Per* contra, the learned counsel for the applicants submitted that the learned Commissioner has considered the oral and documentary evidence in right perspective and awarded just and reasonable compensation. He further submitted that Ex.B.1 Policy covers the risk of the driver. He further submitted that as per the terms and conditions of the Ex.B.1 policy, in case of death of owner – cum – driver, the maximum amount to be awarded is Rs.2.00 lakhs and not in the case of death of a paid driver.

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

> i) Whether Ex.B.1 insurance policy does not cover the risk of the driver of the Jeep?
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> ii) Whether as per the terms and conditions of the policy, the liability of the insurer is to the extent of Rs.2.00 lakhs only?
>
> 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?

<u>Point Nos.1 and 2</u>:

12 Both the points are interlocutory with each other; hence, I am inclined to deal with these two points simultaneously in order to avoid recapitulation of facts and evidence.

13 As per the findings of the learned Commissioner, the deceased died out of and during the course of employment. Opposite Party No.2 is not seriously disputing the employer and employee relationship

between Opposite Party No.1 and the deceased. The recitals of Ex.A.1, A.2 and A.3 clearly go to show that the deceased died in a motor vehicle accident that occurred on 28.02.2004 out of and during the course of employment. I am fully agreeing with the findings recorded by the learned Commissioner that the deceased died out of and during the course of employment.

14 The oral testimony of R.W.1 coupled with Ex.B.1 clearly reveals that the Jeep bearing No.AP-04-U-6840, which belongs to the Opposite Party No.1, was insured with the Opposite Party No.2 with effect from 20.06.2003 to 19.06.2004. Ex.B.1 was in force as on the date of accident i.e. 28.02.2004. At this juncture, the learned counsel for the Opposite Party No.2 has drawn my attention to the ratio laid down in ***National Insurance Company Limited Vs. D. Sivasankar***[1] wherein this Court held as under:

> 10. The first two categories of coverage are referred to in Section 147(1)b(i) and (ii), in specific terms. The third type of coverage, namely, the one towards the Drivers and other employees, is to be discerned from the proviso. The proviso indicates that the policy is to per se, cover the liability towards the employees referred to in proviso (i) (a), (b) and (c), i.e., Driver of the vehicle, the Conductor of a public transport vehicle or any other employee in a goods vehicle. The coverage for any employees other than those, referred to above, is optional and cannot be treated as a requirement under the M.V. Act. The liability arising under the W.C. Act, in respect of death or bodily injury towards a Driver is statutory and mandatory and any basic policy would cover it. The insurer would not be under obligation to pay any extra premium to cover the liability towards the Driver of the vehicle.
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> 11. In Ex.B-1, it is indicated that an additional sum of Rs.15/- is to be paid to cover the liability towards "Owner-cum-Driver. On behalf of the appellant, it is contended that the liability towards a Driver does not exist, since the extra premium of Rs.15/- was not paid.
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> 12. An owner of the vehicle, when he drives it, cannot be treated as an employee. The basic coverage under the M.V. Act as well as the W.C. Act is towards the Driver. If an owner sustained injuries, while driving the vehicle, he does not answer the description of a workman under the provisions of the W.C. Act, and as such cannot claim compensation. The basic liability to pay the compensation would be that of an owner and the insurer has, only to indemnify it. When the owner sustains an injury, while driving the vehicle, he has to

> pay compensation to himself, and in such an event, the liability of an injurer cannot be contemplated. It is for this reason, that Ex.B-1, equivalent to Ex.A-5, provided for payment of extra premium of Rs.15/-, to cover the liability towards the Owner-cum-Driver, and in such an event, if the said amount is paid, the owner of the vehicle would be in a position to claim compensation from the insurer, if he sustained injuries, while driving the vehicle. By no stretch of imagination, it can be said that the insurer would not cover the liability towards the Driver, unless the extra premium for covering the liability towards the owner-cum-driver is not paid. Therefore, the contention advanced on behalf of the appellant cannot be accepted.

15 As per the principle enunciated in the case cited supra, the policy issued by the insurer will cover the risk of the driver of the vehicle even without paying extra premium. Section 147 of the M.V. Act mandates that there is a statutory obligation on the part of the insurer to indemnify the liability of the insured in case of death or bodily injury of driver. Having regard to the facts and circumstances of the case, and also the principle enunciated in the case cited supra, I am unable to accede to the contention of the learned counsel for the Opposite Party No.2 that Ex.B.1 policy does not cover the risk of the driver.

16 A perusal of Ex.B.1 reveals that Opposite Party No.1 paid extra premium of Rs.100/- covering the compulsory PA to owner – cum – driver. As per the terms and conditions of the insurance policy, if the owner of the vehicle, while driving the vehicle dies or sustains injuries, the liability of the insurance company is limited to Rs.2.00 lakhs only. There is no restriction in Ex.B.1 policy that the liability of the insurance company is restricted to the tune of Rs.2.00 lakhs in case of death of driver. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, the contention of the learned counsel for the Opposite Party No.2 that the liability of the insurer is to the extent of Rs.2.00 lakhs only is not sustainable either on facts or in law. Hence these points are answered in favour of the applicants and against the Opposite Party No.2.

Point No.3:

17 The contention of the learned counsel for the Opposite Party No.2 is that the deceased was not having valid and effective driving licence as on the date of accident. A perusal of Ex.A.4 clearly reveals that the deceased had obtained licence to drive Light Motor Vehicle on 03.11.2003. The driving licence of the deceased will be valid up to 02.11.2023. The accident occurred on 28.02.2004 whereas the deceased had obtained the driving licence on 03.11.2003. The documentary evidence produced by the applicants clearly establishes that the deceased was having licence to drive the Light Motor Vehicle. Admittedly, Jeep is a Light Motor Vehicle. A person who is having licence to drive LMV Non-transport is also entitled to drive LMV Transport in view of the ratio laid down in ***S.Iyyapan Vs. United India Insurance Co.***[2] and ***Kulwant Singh and others Vs. Oriental Insurance Co. Ltd***[3]. Having regard to the facts and circumstances of the case and also the principle laid down in the cases cited supra, the Opposite Party No.1 has not violated the terms and conditions of Ex.B.1 policy so as to absolve opposite party No.2 from its liability.

18 By the time of accident, the deceased was aged about 25 years. As per the provisions of the W.C. Act, the appropriate factor for the age group of 25 years is 216.91. Except the self serving testimony of A.W.1, there is no other convincing evidence to establish that by the date of accident, the deceased was earning Rs.5,000/- pm. In the absence of documentary evidence, there is no other option except to place reliance on the Orders and notifications issued by the Government from time to time under the Minimum Wages Act in order to determine the wage of the workman. Basing on the G.O.Ms.No.81 dated 29.03.2001, the learned Commissioner has determined the wage of the deceased as Rs.3094.50 ps. Thus the compensation, which the

learned Commissioner has assessed, is as follows:

216.91 X 50/1000 X 3094.50 = Rs.3,35,614/-

19 The learned Commissioner has strictly adhered to the provisions contemplated under the W.C. Act while determining the amount of compensation. The learned Commissioner has also awarded Rs.671/- towards stamp duty and awarded interest @ 9% p.a. from the date of accident till the date of realization.

20 The applicants have not filed any appeal or cross objections challenging the quantum of compensation awarded by the learned Commissioner. The learned Commissioner has considered the oral and documentary evidence in right perspective and allowed the petition. The findings recorded by the learned Commissioner are supported by evidence much less legally admissible evidence. 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.

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

T.SUNIL CHOWDARY, J.

Date: 23rd September, 2015.

Kvsn

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[1] 2006 (4) ALT 526

[2] (2013) 7 SCC 62

[3] 2014 ACJ 2873