

**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

**CIVIL MISCELLANEOUS APPEAL No.749 OF 2005**

**JUDGMENT:**

This appeal is filed under Section 30 of the Workmen's Compensation Act, 1923, challenging the order dated 31.1.2005 in W.C. Case No.5 of 2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-II Circle, Guntur, wherein and whereby an amount of Rs.2,21,660/- 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 appeal will hereinafter be referred to as they are arrayed before the learned Commissioner.

3. The facts leading to filing of the present appeal are briefly as follows: The opposite party No.1 engaged Bonthu Rama Rao as driver on the jeep bearing No.AP 27T 7752. On 27.12.2000 Rama Rao was proceeding from Vanaipalem to Sattenapalli by driving the jeep. The jeep turned turtle when it reached near Brugubanda railway station. Rama Rao (hereinafter referred to as, the deceased) sustained grievous injuries and died in Government Hospital, Sattenapalli while undergoing treatment. The Station House Officer, Sattenapalli Rural Police Station registered a case in Crime No.155 of 2000 against the deceased under Section 304A IPC. The first applicant is the mother, second applicant is the wife, and applicant Nos.3 and 4 are children of the deceased. The jeep, which belongs to opposite party No.1, was insured with opposite party No.2. Hence, the application claiming a compensation of Rs.2,50,000/- from opposite party Nos.1 and 2.

4. The opposite party No.1 remained *ex parte*. The opposite party

No.2 filed counter denying all the averments made in the application including the manner of the accident, *inter alia*, contending that the applicants are not entitled to claim compensation unless they prove that the deceased was having valid and effective driving licence as on the date of the accident.

6. Basing on the rival contentions, the Commissioner framed the following issues:

(1) Whether the deceased was a workman as per the provisions of the Act and he died due to personal injuries received in an accident arising out and in the course of his employment?

(2) What was the age of the deceased at the time of the accident?

(3) What were the wages paid to the deceased at the time of accident?

(4) Amount of compensation payable? and

(5) Who are liable to pay compensation?

6. During the course of enquiry, on behalf of the applicant A.Ws.1 and 2 were examined and Exs.A1 to A4 were marked. On behalf of opposite party Nos.1 and 2, no oral or documentary evidence was adduced.

7. On appraising the oral, documentary evidence and other material available on record, the learned Commissioner, while arriving at the conclusion that the deceased died out of and in the course of employment, allowed the petition in part by awarding compensation amount of Rs.2,21,660/- directing opposite party No.2 to deposit the same at first and then recover the same from opposite party No.1, as opposite party No.1 violated the conditions of policy by entrusting the crime vehicle to an unlicensed driver (the deceased). Feeling aggrieved by the order of the learned Commissioner, opposite party No.2 preferred the present appeal.

8. The learned counsel for the opposite party No.2 submitted that the learned Commissioner, while arriving at the conclusion that the deceased was not having driving licence, ought not to have directed it to pay compensation to the applicants and recover the same from opposite party No.1. He further submitted that the learned Commissioner has rightly appreciated the oral testimony of A.W.2 so far as the driving licence of the deceased is concerned. ***Per contra***, learned counsel for the applicants and the learned counsel for the opposite party No.1 submitted that the finding of the learned Commissioner that the deceased was not having driving licence is not supported by any documentary evidence. Learned counsel for the claimants further submitted that in the absence of Motor Vehicle Inspector's report, learned Commissioner ought not to have given such finding on the driving licence of the deceased. He also submitted that the testimony of A.W.2 is not correctly appreciated by the learned Commissioner.

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

Whether the learned Commissioner has committed any error while directing opposite party No.2 to pay the compensation to the applicants and recover the same from opposite party No.1 having held that the deceased was not having valid and effective driving licence at the relevant point of time?

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**Point:**

10. As rightly pointed out by the learned counsel for the appellant-opposite party No.2, learned Commissioner arrived at the conclusion that the deceased was not having driving licence as on the date of the accident. For one reason or the other, opposite party No.1 did not choose to file counter either admitting or denying about the driving

licence of the deceased. Surprisingly opposite party No.1 came into witness box as A.W.2, and gave two different versions in the cross-examination. At the initial stage, he deposed that he verified the driving licence of the deceased. At the later stage, he admitted that he has stated to the Motor Vehicle Inspector that the deceased was not having driving licence. Admittedly, opposite party No.2 did not issue notice directing opposite party No.1 to produce driving licence of the deceased. Learned counsel for opposite party No.2 is mainly placing reliance on Motor Vehicle Inspector's report, but any such report was not produced before the learned Commissioner. Opposite party No.2 did not take any steps to examine the officials of concerned Road Transport Authority to establish positively that the deceased was not having valid and effective driving licence so as to absolve its liability.

11. The Workmen's Compensation Act is a piece of social beneficial legislation. When two views are possible, basing on the facts pleaded and proved, the court has to take the view, which is in favour of workman. The material available on record is not sufficient to arrive at a positive conclusion on the question "*whether the deceased was having valid driving licence as on the date of the accident or not?*".

12. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to remand the matter to the learned Commissioner so as to give a finding on the above question after giving reasonable opportunity to both parties to adduce evidence with regard to driving licence of the deceased only. It is made clear that no opportunity shall be given to any of the parties with regard to quantum of compensation. Accordingly, the point is answered.

13. With the above directions, the appeal is allowed setting aside the order dated 31.1.2005 in W.C. Case No.5 of 2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-II Circle, Guntur. The matter is remanded

directing the learned Commissioner to dispose of the matter afresh as indicated in the penultimate paragraph, without being influenced by any of the observations made hereinabove. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

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**T.SUNIL CHOWDARY, J.**

Date: 08.9.2015.

NOTE:

Office is directed to dispatch the order and  
Lower Court record by 13.9.2015.

(By order)

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