THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

C.M.A.No.450 of 2015

JUDGMENT:

This appeal by the appellant/second opposite party under Section 30 of the Workmen's Compensation Act, 1923 presently known as Employees' Compensation Act ('the Act' for short) is directed against the order dated 26.08.2009 in W.C.No.9 of 2004 of the learned Commissioner for Workmen's Compensation and the Deputy Commissioner of Labour, Vizianagaram.

2. I have heard the submissions of the learned counsel for the appellant/2nd Opposite Party ('the 2nd opposite party, for brevity) and the learned counsel for the respondents 1 to 3/applicants ('the applicants', for brevity). I have perused the material record. The appeal against the 4th respondent/first opposite party was dismissed for default.

3. The introductory facts, which are necessary for consideration, in brief, are as follows:

The case of the applicants is this: The applicants are the wife and the other legal heirs of the deceased, Sahu Krishna, ('the deceased' for brevity). The deceased used to work as a driver on the Tractor bearing registration number AP 35 T 0120 of the first opposite party-owner-cum-employer. On 30.03.2004 at about 5.00 PM the deceased had proceeded on the said tractor as a driver for crushing the paddy crop in the fields of one Poojari Narayana Swamy. While returning on the said tractor to the house of the 1st opposite party, and on the way, when the vehicle reached Ramasagaram, he had lost control over the steering wheel of the tractor due to the rough road conditions. And, on that the tractor had capsized. The deceased, who had fallen down from the tractor, succumbed on the spot, to the injuries sustained out of and during the course of his employment on the said tractor of the 1st opposite party, which was insured with the second opposite party/insurer. Post mortem was conducted in the Government Hospital, Saluru. On a report that was immediately lodged a case in crime no. 13/2004 was registered by the Station House Officer, Saluru Rural Police Station. The first opposite party-cum-owner of the vehicle had remained *ex parte* before the learned Commissioner. The second opposite party having filed a Counter had resisted the claim of the applicants. At trial, the 1st applicant was examined as AW1 and exhibits A1 to A5 were marked on the side of the applicants. No oral evidence was adduced on the side of the second opposite party. But, exhibit R1-the copy of the insurance police was marked. According to the 2nd opposite party evidence was adduced to show that the deceased-driver did not hold a valid driving licence to drive the tractor. Be that as it may. On merits, the learned Commissioner had awarded a total compensation of Rs.3,26,945/- to the applicants and had held that both the opposite parties are jointly and severally liable to pay the said compensation and had directed them to deposit the said amount within 30 days from the date of the receipt of the said orders. It was also held that on failure to deposit so, they shall be liable to pay the same with interest at 12% per annum. Aggrieved of the said orders, the second opposite party had preferred this appeal.

4. The learned counsel for the 2nd opposite party had contended as follows: The learned Commissioner had erred in fastening the liability on the 2nd opposite party though the deceased had only held a licence which authorised him to drive a LMV (non-transport), and, was not having valid and effective driving licence to drive the tractor, which is a Transport vehicle and that, therefore, the impugned order is liable to be set aside.

5. Per contra, the learned counsel for the applicants having supported the order of the learned Commissioner had submitted that the compensation awarded with interest is just and fair and that the contentions of the second opposite party in this appeal are devoid of merit and contrary to the settled legal position.

6. In view of the contentions, the points that arise for determination in this appeal are:

Whether the deceased held only a licence which authorised him to drive a LMV (non-transport), and, was not having valid and effective driving licence to drive the tractor, which is a Transport vehicle? And, if so, whether the impugned order fastening the liability on the 2nd opposite party is liable to be set aside?

7. <u>POINTS:</u>

7.1 The learned Counsel for the 2nd opposite party would submit that evidence was adduced on its side to establish that at the time of the accident the deceased held only a licence, which authorised him to drive a LMV (non-transport), and that the deceased was not having a valid and effective driving licence to drive the tractor, which is a Transport vehicle, but, the learned Commissioner did not advert to the said evidence and the issue and had erroneously observed that no such evidence was adduced by the 2nd opposite party. Assuming for a moment that the deceased held only a licence which authorised him to drive a LMV (non-transport) as contended by the 2nd opposite party, still the order is sustainable in the light of the legal position obtaining.

6. **In Kulwant Singh v. Oriental Insurance Company Ltd.[1],** the question that fell for consideration before the Supreme Court was whether the Insurance Company is entitled to recovery rights on the ground of breach of conditions of insurance policy when the driver possesses valid driving licence for driving light vehicle but fails to obtain endorsement for driving goods vehicle. While answering the said question the Supreme Court having referred to the decisions in **S.Iyyappan v. United India Insurance Co. Limited and Another**

[(2013) 7 SCC 62] and **National Insurance Co. Ltd., v. Annappa Irappa Nesaria Alias Nesearagi and Ors., [(2008) 3 SCC 464]** held as under:

> **We find the judgments relied upon cover the issue in favour of the Appellants. In *Annappa Irappa Nesaria* (supra), this Court referred to the provisions of Section 2(21) and (23) of the Motor Vehicles Act, 1988, which are definitions of 'light motor vehicle' and 'medium goods vehicle' respectively and the rules prescribing the forms for the licence, i.e. Rule 14 and Form No. 4. It was concluded:**
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> ***From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and***

"heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well.

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:

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 (Civil Misc. Appeal No. 1016 of 2002, order dated 31.10.2008 (Mad) is, therefore, liable to be set aside.

No contrary view has been brought to our notice.

In view of the precedential guidance it follows that there is no merit in the contention of the 2nd opposite party and hence, it is liable to pay the compensation awarded to the applicants and that the learned Commissioner is justified in passing the impugned award.

7. In the result, the appeal is dismissed. No costs.

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

M. SEETHARAMA MURTI, J

3rd July, 2015
Vjl

[1] 2014 ACJ 2873