

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.30 of 2008

Dated 10-8-2016

Between:

National Insurance Company Limited, represented
by its Branch Manager.

..Appellant.

And:

Korivi Ramanamma and others.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.30 of 2008

JUDGMENT:

This appeal is preferred against order dated 4-8-2006 in W.C.No.10 of 2005 on the file of Commissioner for Workmen's Compensation, Ongole.

Respondents 1 to 3 herein submitted an application to Commissioner for Workmen's Compensation contending that late Korivi Venkateswarlu was working as driver on lorry bearing No.ADF 3274 belonging to 4th respondent herein and that he died on 26-6-2004 during course of his employment, for that ground, they claimed a sum of Rs.5,00,000/- as compensation and claim was resisted by Insurance Company. Lower authority conducted enquiry and on a consideration of evidence of record, i.e., evidence of A.W.1 and documents Exs.A.1 to A.5 on behalf of claimants, evidence of R.W.1 and Exs.R.1 and R.2 marked on behalf of Insurance Company, lower authority recorded finding that there is no driving licence to the deceased and therefore, Insurance Company is not liable to pay any compensation. Having recorded so, lower authority however held as insurance policy was in force as on the

date of accident, held that Insurance Company can recover amount from the owner i.e., 4th respondent herein. Now aggrieved by the said direction, Insurance Company preferred the present appeal.

Heard both sides.

Advocate for appellant submitted that Honourable Supreme Court in *NATIONAL INSURANCE COMPANY LIMITED Vs. MASTAN AND ANOTHER* (^[1]) held that under Motor Vehicles Act, the driver of the vehicle is liable but in case arising under Workmen's Compensation Act, if the driver of the vehicle has no licence, the insurer would not be liable to indemnify the insured, therefore in view of the said decision, giving such a direction to the Insurance Company to pay and recover is not tenable and therefore, appeal has to be allowed to the extent of direction given to the Insurance Company of pay and recover.

Advocate for 4th respondent i.e., owner submitted that the above referred decision was only on the point of appeal provided under the Workmen's Compensation Act and therefore, that decision has no application and the lower authority has rightly directed Insurance Company to pay the amount and recover from owner and that the appeal is devoid of merits.

The short point that involved in this appeal is whether the direction of the lower authority to pay and recover is sustainable or not.?

POINT:

Admittedly, the deceased was a driver on lorry bearing No.A.P. 30 T 2766 belonging to 4th respondent herein. It is also admitted fact that deceased died on 26-6-2004 while discharging his duties as driver. From the evidence, it is clear that the deceased had no driving licence as on the date of accident. Lower authority on consideration of evidence clearly recorded a finding that Insurance Company is not liable to pay any

compensation in view of the fact that driver had no driving licence. In *NATIONAL INSURANCE COMPANY LIMITED Vs. MASTAN AND ANOTHER*, (cited above), the Honourable Supreme Court observed as follows:

“Under the 1988 Act, the driver of the vehicle is liable, but he would not be liable in a case arising under the 1923 Act, if the driver of the vehicle has no licence, the insurer would not be liable to indemnify the insured. In a given situation, the Accidents Claims Tribunal, having regard to its rights and liabilities, vis-à-vis, the third person may direct the insurance company to meet the liabilities of the insurer, permitting it to recover the same from the insured. The 1923 Act does not envisage such a situation. Role of Reference by incorporation has a limited application. A limited right to defend a claim petition arising under one statute cannot be held to be applicable in a claim petition arising under a different statute unless there exists express provision therefor. Section 143 of the 1988 Act makes the provisions of the 1923 Act applicable only in a case arising out of no fault liability, as contained in Chapter X of the 1988 Act. The provisions of Section 143, therefore, cannot be said to have any application in relation to a claim petition filed under Chapter XI thereof. A fortiori in a claim arising under Chapter XI, the provisions of the 1923 Act, will have no application. A party to a lis, having regard to the different provisions of the two Acts cannot enforce liabilities of the insurer under both the Acts. He has to elect for one.”

From a reading of the above para, it is clear that under 1988 Act i.e., Motor Vehicles Act, Tribunal may direct the Insurance Company to meet the liabilities of the insurer permitting it to recover the same from the Insurer and such a situation is not provided under Act, 1923 i.e., Workmen's Compensation Act.

The above referred decision clearly applies to the facts of this case, particularly, in view of the findings that deceased had no driving licence as on the date of accident. As rightly pointed out by advocate for appellant, the lower authority having held that the Insurance Company has no liability to pay any compensation in view of the fact that the deceased driver had no driving licence,

went wrong in giving a direction of pay and recover.

By relying on the above referred Honourable Supreme Court decision, I am of the view that the direction given by the lower Authority is liable to be set aside and accordingly, appeal is partly allowed setting aside the direction of pay and recover and rest of the findings of the lower authority are upheld.

Appeal is partly allowed accordingly. No costs.

It is represented that the claimants have already withdrawn 50% of the deposited amount in pursuance of the direction of this court.

Considering the same, Insurance Company is at liberty to recover the same from the owner in accordance with law.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 10-8-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs

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