

HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.4747 of 2004

J U D G M E N T:

This appeal is filed by the appellant herein/respondent No.2 under Section 30 of Workmen's Compensation Act, 1923 (for short 'the Act'), aggrieved by the order dated 30.03.2004, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Warangal-II, in W.C.No.15 of 2003, awarding compensation of Rs.4,22,974.50ps.

2. Respondent Nos.1 & 2 herein/petitioners filed the above W.C under Section 22 of the Act, claiming compensation of Rs.4,50,000/-, on account of the death of B.Bhaskar on 28.11.2002 in a motor vehicle accident that occurred during the course of employment under respondent No.3 herein/respondent No.1. The tractor and trailer of respondent No.3 herein/respondent No.1 involved in the accident is insured with the appellant herein/respondent No.2.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the W.C.

4. The brief averments made in the petition are that the deceased B. Bhaskar was working as a labourer by loading and unloading the crushed stone. On the date of accident, the deceased along with other labourer A. Sammaiah was attending the labour work on the tractor and trailer bearing

Nos.AP.36U.2649 & 2650 belonging to respondent No.1 at Kondur village. While the vehicle was proceeding towards Rayaparthi and when the vehicle reached agricultural land of Ratnakar Reddy at about 7:00 p.m, the driver the vehicle drove it in a rash and negligent manner, due to which the vehicle went side way into a ditch and turned turtle. Due to the accident, the deceased came underneath the vehicle and died on the spot. The police, Rayaparthi registered a case in Cr.No.127 of 2002 against the driver of the tractor and trailor. The deceased died while discharging the duties during the course of his employment under respondent No.1. The deceased at the time of his death was aged 25 years and was earning Rs.150/- per day while he was on duty. Therefore, the petitioners being the wife and daughter of the deceased, claimed compensation of Rs.4,50,000/- against the respondents.

5. Respondent No.1 filed the counter and admitted that deceased was the co-worker along with Sammaiah under him and also admitted that police, Rayaparthi registered the case in Cr.No.127 of 2002 against the driver of the tractor. But, he stated that the deceased was negligent and contributed his negligence to cause the accident. He also stated that the vehicle was insured with respondent No.2, the Insurance policy is in force at the time of accident and respondent No.1 informed about the death of the deceased to respondent No.2 immediately after the death and requested respondent No.2 to

pay the compensation and finally stated that the compensation claimed by the petitioners is high, excessive and exorbitant and prayed the Court to dismiss the petition.

6. Respondent No.2 filed the counter and admitted that the tractor and trailer bearing Nos.AP.36U.2649 and 2650 were insured with it. It further stated that respondent No.1 had never informed about the alleged accident to it at any time and there is no evidence to show that the driver of the vehicle was having valid driving license. Respondent No.2 put the petitioners to prove that the deceased was working as labourer for loading and unloading and denied that the deceased was earning Rs.160/- as wage. Respondent No.2 also put the petitioners to prove the income and age of the deceased and finally stated that the compensation claimed by the petitioners is high, excessive and prayed for dismissal of the petition.

7. During the course of enquiry, PWs.1 & 2 were examined and Exs.A1 to A5 got marked. On behalf of the respondents, no oral evidence was adduced except marking of Ex.B1. The Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Warangal-II, after discussing the evidence on record elaborately passed the order in W.C.No.15 of 2003 fixing the compensation as Rs.4,22,974.50ps. Aggrieved by the said order passed, the Insurance Company filed the present appeal.

8. According to the appellant, deceased was the labourer in the tractor and trailer that was not covered by the policy and he was an unauthorized passenger in the goods vehicle. Therefore, the petitioners are not entitled to any compensation and prayed the Court to allow the appeal.

9. Having regard to the submissions made by the learned counsel appearing for both the parties, the point which is to be decided in this appeal is whether the appellant/Insurance Company has made out any case to set aside the order passed by the Commissioner for Workmen's Compensation as prayed for?

10. **P O I N T:** A perusal of the evidence of PW.1 shows that the deceased was working as labourer for loading and unloading crushed stone. On the date of accident i.e., on 28.11.2002, he has loaded the crushed stone on tractor and trailer at Kondur village and the vehicle was proceeding towards Rayaparthi village and when the vehicle reached near agricultural land of Ratnakar Reddy at about 7:00 p.m, the accident occurred due to the rash and negligent driving of the driver of the tractor and trailer and the deceased Bhaskar died on the spot. Police, Rayaparthi registered the case in Cr.No.127 of 2002 against the driver of the vehicle. To prove the accident, the petitioners filed Ex.A1 copy of the First Information Report, Ex.A4 M.V.I report and Ex.A5 charge sheet. A perusal of these documents clearly established that the accident occurred due to the rash and negligent driving of

the driver of the tractor and trailer bearing Nos.AP.36U.2649 & 2650.

11. Coming to the liability of the appellant/Insurance company is concerned, it is specifically pleaded that the deceased is not covered under the policy and he is an unauthorised passenger. A perusal of Ex.B1 shows that the policy covers seven labourers. Therefore, the contention of the appellants cannot be accepted. Further, there is no evidence to show that the deceased was travelling on the tractor as an unauthorised passenger. Considering the evidence on record, the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Warangal-II rightly proceeded with the evidence on record and awarded just and reasonable compensation to the petitioners. As the petitioners lost their livelihood and dependency, the findings and observations in W.C.No.15 of 2003 needs no interference and the appeal is liable to be dismissed.

12. Accordingly, the Civil Miscellaneous Appeal is dismissed. No order as to costs.

13. Miscellaneous Petitions, if any, pending in this Civil Miscellaneous Appeal shall stand closed.

ANIS, J

Date: 16.09.2016
sr