hHONOURABLE SRI JUSTICE S.RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.933 OF 2008

Dated 1-7-2016

Between:

The National Insurance Company Limited, Branch Office, Door No.15-1-85, G.B.C.Road,. Ponnur-522 124 represented by its Branch Manager.

..Appellant.

And:

Dheeravath Chandi and others.

..Respondents.

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JUDGMENT:

This appeal is preferred against order dated 1st November, 2007 in W.C.No.33 of 2005 (F) on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda.

Respondents 1 to 4 herein filed application under Section 22 of Workmen's Compensation Act, 1923 contending that deceased D.Lakshma was working as driver under 5th respondent herein on Tractor Trailor bearing No.AP-24E-3967 and AP-24E-3968 on a monthly salary of Rs.3,000/-. It is further contended that on 18-1-2005, the deceased and one Ramavath Voora while returning on Tractor Trailor from Mudigonda thanda and proceeding to Mallapuram village, when tractor reached outskirts of Chennamanenipally, deceased driver lost control over the steering of the vehicle, as a result, the vehicle fell down into a ditch and driver sustained grievous injury and died on the spot. They contended that as driver died during the course of his employment, claimants being Legal Representatives are entitled for compensation of Rs.4,00,000/-.

Insurance company denied the claim and mainly contended that the deceased was not possessing valid and effective driving licence as on the date of accident and therefore, there is no liability on the part of Insurance Company.

On these contentions, lower authority conducted enquiry during which, one witness is examined and five documents are marked on behalf of claimants and one witness is examined and three documents are marked on behalf of Insurance Company and on a overall consideration of oral and documentary evidence, lower authority granted Rs.3,21,849/- as compensation and aggrieved by the same, present appeal is preferred.

Heard both sides.

Advocate for appellants submitted that the lower authority failed to see that employer is guilty of violation of terms and conditions of policy as he engaged a driver who do not possess a valid driving licnece at the time of accident and therefore, the owner alone is liable to pay any compensation. He further submitted that the original driving licence which is marked as Ex.A.5 reveal that deceased was aged about 25 years at the time of obtaining licence and therefore, his age should have been taken as 28 years as on the date of accident in stead of 27 years and non-consideration of this is a substantial question of law. It is further submitted that Insurance Company is not liable to pay compensation and the appeal has to be allowed.

On the other hand, advocate for claimants submitted that the lower authority considered the age recorded in the P.M.certificate and calculated compensation and therefore, the objection of Insurance company is not tenable. He further submitted that there is no positive evidence to show that the deceased was not possessing valid effective driving licnece as on the date of accident and the lower authority rightly granted compensation and that there are no grounds to interfere with the order of the tribunal.

Now the point that would arise for my consideration in this appeal is whether the order of Tribunal is legal, correct and proper?

POINT:

It is the specific case of the claimants that deceased while working as driver under 5th respondent herein died on 18-1-2005 due to accident caused to Tractor Trailor bearing No.AP-24E-3967 and AP-24E-3968. As already referred above, Insurance Company mainly resisted the claim on the ground that deceased was not possessing valid and effective driving licence as on the date of accident. Legal Assistant working in Insurance Company was examined as R.W.1. He deposed that at the time of issuing policy a condition is imposed in the policy that driver of the vehicle should possess effective valid driving licence and as the deceased was not having valid effective driving licence, it is a clear violation of policy condition. He further deposed that deceased took driving licence in the year 1994, May, 27 and the licence was valid upto 26-5-1997 and the accident was on 18-1-2005, therefore, there is no valid effective driving licence. According to the Insurance Company, the deceased has not renewed his driving licence for nearly eight years. No record was produced on behalf of Insurance Company to show that the driving licence issued initially was not renewed subsequently. Having taken the plea, the burden is on the Insurance company to prove the fact that deceased had no effective valid driving licence. In the cross examination, R.W.1 clearly stated that police investigation discloses that deceased was driver on tractor and trailer at the time of accident and that he was having driving licence to drive the same. He further stated that there is no record to show that the deceased was disqualified to drive tractor tailor as on the date of accident. Having stated so, the burden is more on the Insurance Company to show that the deceased was not having effective and valid driving lience as on the date of accident, particularly when police investigation disclose that deceased was driver having driving licence as on the date of accident which fact is even admitted by R.W.1. So as rightly pointed out by advocate for claimants, the lower authority has rightly appreciated material on record and came to a right conclusion and objection of Insurance Company is not at all tenable.

The other objection of Insurance Company is that the lower authority has taken age of the deceased as 27 years instead of 38 years.

As seen from the record, in the counter, there is no dispute with regard to age of the deceased as pleaded in the claim petition. Even in the evidence also, R.W.1 did not whisper anything with regard to his age and it was only suggested to P.W.1 that deceased was aged 38 years. But the suggestion remained as suggestion only.

As seen from the record, lower authority considered the age that was recorded in the Post Mortem Certificate by the Medical Officer and took the same for calculating compensation. I do not find any wrong in the approach of Lower Authority and therefore, objection of Insurance Company on this aspect is also not tenable.

For the above reasons, I am of the view that there are no grounds to interfere with the order of the lower authority and that the appeal is devoid of merits.

Therefore, appeal is dismissed. No costs.

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

JUSTICE S.RAVI KUMAR

Dated 1-7-2016.
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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