THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CMA No.223 of 2009

Date:24.08.2016

Between:

National Insurance Company Limited, rep by its Senior Divisional manager, Divisional office, IV Floor, Swapnalok Complex, Secudnerabad.

... Appellant.

AND

Smt. Safia Sulthana and others.

...Respondents.

The Court made the following :

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JUDGMENT:

This appeal is preferred against order dated 06-07-2007 in W.C.No.92/2005 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle-III, Hyderabad.

2. Respondents 1 to 5 herein submitted application to the Commissioner for Workmen's Compensation alleging that Md. Tehar, while working as laborouer on tractor-trailer bearing Nos.AP-36T - 8660 & 8661 belonging to sixth respondent herein, died due to injuries sustained in an accident and claimed for compensation.

3. Insurance Company disputed the claim and contended that as per the records, the deceased was sitting on the engine of the tractor, which is against terms and conditions of Insurance Policy, therefore it has no liability to pay any compensation. On these contentions, lower authority examined two witness and marked eight documents on behalf of claimants and examined one witnesses and marked four documents on behalf of insurance company and on a consideration of oral and documentary evidence, did not accept the objection of the insurance company and granted compensation of Rs.2,28,639/-. Aggrieved by the said order, Insurance Company preferred the present appeal.

3. Heard both sides.

4. Advocate for Insurance Company submitted that lower authority failed to see that policy does not cover the risk of the deceased as the premium is paid only for the driver and no additional

premium was paid covering the risk of labourer. He submitted that even according to the own case of the claimants i.e., F.I.R., the deceased was sitting on the engine of the tractor, which is not permissible and as he died due to his own negligence, there is no liability for the insurance company. He submitted that lower authority wrongly granted compensation and the order of the lower authority is liable to be set aside.

5. On the other hand, Advocate for claimants submitted that evidence of A.W.2 would clearly disclose that the deceased and A.W.2 were sitting on the door of the trailer and due to application sudden brake, deceased fell on the engine and ran over by the tractor, therefore the objection of the Insurance Company is not tenable and the lower authority, considering evidence of A.W.2, negatived the objection of the insurance company. He further submitted that the deceased was working on the tractor-trailer as laborouer and the lower authority rightly granted compensation and there are no grounds to interfere with the same. Advocate for claimants further submitted that policy covered the risk of driver of the vehicle and there is no need to pay any extra premium for the driver and from the evidence of R.W.1 and policy, it is clear that a sum of Rs.25/- is paid as premium, therefore there is obligation on the part of insurance company to pay the compensation.

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

7. **Point:-** There is no dispute that Md. Taher died in an accident on 03-01-2005, while proceeding on a tractor-trailer bearing No.AP-36T-8660 & 8661. The main objection of the insurance company is that as per F.I.R., deceased was travelling on the engine of the tractor, which is not permissible and for that reason, there is no liability for the insurance company to pay any compensation. As seen from the record, wife of the deceased who was examined as A.W.1 lodged F.I.R., with the police. It is clear from her evidence that she is not an eye-witness and she only gave the complaint on the basis of information she received through somebody. Police conducted investigation and filed charge sheet and in the charge sheet, it is recorded that investigation disclose that the deceased was eking out his likelihood by doing labour work, on 03-01-2005, in the morning hours, he went to labour work on tractor-trailer bearing No.AP-36T-8660 & 8661 along with A.W.2 and on the same day evening, they unloaded the stone pillar at Hyderabad and returning back to Valigonda and when the tractor reached outskirts of Gokaram Village near Sriramulu Banda, driver of the tractor drove the vehicle in a rash and reckless manner at high speed, due to which, the deceased fell on the engine and the tractor turned turtle on the deceased and the deceased succumbed to injuries on the way to hospital. On behalf of claimants, the only eye-witness was examined as A.W.2 and he specifically deposed that on the fateful day, he along with deceased was sitting on the door of the trailer and that the driver applied sudden brake, due to which, the deceased fell on the engine and tractor tyre ran over him and that the deceased died on the way to hospital. Considering this part of evidence, lower authority has not accepted the objection of the insurance company with regard to the averments made in the F.I.R. I do not find any wrong in the approach of the lower authority in

appreciating the evidence. It is well settled principle that FIR is only an information to the police about the commission of offence or about happening of any incident and ultimately, investigation report is the main document which would decide the correctness of the F.I.R., allegations so once the charge sheet is filed stating that the deceased fell on engine of the tractor and that resulted the incident. The averment in the F.I.R., to the effect that the deceased was sitting on the engine of the tractor cannot be taken into consideration, which the lower authority rightly did.

8. There is no evidence on behalf of insurance company to show that deceased was sitting on the tractor at the time of incident. So the evidence of A.W.2, which is supported and corroborated with the contents of charge sheet- Ex.A2, it is clear that driver of the tractor drove the vehicle in a rash and negligent manner and applied for sudden brake due to which, the deceased fell down on the engine and at the same time, the tractor turn turtle and the deceased was ran over that resulted in death of the deceased, therefore, the objection of the Insurance Company is not tenable.

9. The next contention of the insurance company is that the risk of the deceased was not covered under the policy, but as rightly pointed out by Advocate for claimants when premium of Rs.25/- is paid covering risk of one employee that can be taken to the aid of the deceased as no other person sustained injuries and claimed any compensation. The lower authority has elaborately considered each and every aspect and came to a right conclusion in awarding compensation and there are absolutely no grounds to interfere with the findings recorded by the lower authority. Further all the objections raised on behalf of the insurance company are on factual

aspects and no question of law is involved to be considered by this Court. Viewed in any angle there are no grounds to interfere.

10. For these reasons, I am of the view that the appeal is devoid of merits and liable to be dismissed.

11. Accordingly, appeal is dismissed as devoid of merits and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed. No costs.

JUSTICE S. RAVI KUMAR

Date:24.08.2016
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