THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS APPEAL No.2120 OF 2004

JUDGMENT:

The second opposite party/Insurance Company before the Commissioner appointed for Workmen's Compensation Act/ Assistant Commissioner of Labour, Circle-II, Visakhapatnam (hereinafter will be referred as 'Commissioner') preferred this civil miscellaneous appeal under Section 30 of the Workmen's Compensation Act, challenging the award passed against the Insurance Company directing to indemnify the loss caused to the respondents.

The respondents 1 to 3 claiming as dependants of the deceased workmen late Lova Raju, who died in an accident on the fateful day of 08.09.2002 due to injuries sustained in the accident that occurred during and in the course of employment. The fourth respondent is the owner of the tractor bearing No.AP 31 0779 insured with the appellant herein covering the risk of one person employed in connection with operation of the tractor collecting premium of Rs.15/- and as the fourth respondent and the appellant are jointly and severally liable, it is prayed to award compensation against both the fourth respondent and the appellant herein.

The fourth respondent/first opposite party filed counter admitting the accident and death of Lova Raju who was engaged as helper in the operation of the vehicle and that he succumbed to the injuries that he sustained in the road accident on 08.09.2002.

The appellant herein/second opposite party before the Commissioner filed counter and additional counter affidavit while denying material allegations of the claim and specifically contended that Lova Raju succumbed to the injuries caused in the road accident while he was engaged with the fourth respondent as as a helper and *inter alia* contended that the tractor was insured with the appellant vide policy dated 14.06.2002. Further the policy covered the risk of driver only, as the appellant collected Rs.15/- as additional premium in terms of Clause 9 IMT of the policy. The fourth respondent did not pay any premium covering the risk of helper engaged in the tractor in connection with its operation and therefore the appellant/second opposite party is not liable to pay compensation and prayed for dismissal of the claim against the appellant/second opposite party.

During enquiry, on behalf of the claimants A.Ws.1 & 2 were examined and marked Exs.A-1 to A-5. On behalf of the respondents R.W.1 & 2 were examined and marked Exs.B-1, B-2 & X-1.

Upon hearing argument of both the parties, the Commissioner awarded Rs.2,84,368/- making both the fourth respondent/first opposite party and appellant/second opposite party jointly and severally liable to pay the same and directed them to deposit the amount awarded within 30 days from the date of receipt of the order.

Aggrieved by the award passed by the Commissioner, the Insurance Company/Appellant (second opposite party) preferred this civil miscellaneous appeal under Section 30 of the Workmen's Compensation Act, challenging the same on the sole ground that the policy did not cover the risk of a helper or cleaner engaged in the tractor without trailer. Consequently, the appellant/second opposite party is not liable to pay compensation but the Commissioner erroneously awarded compensation making the appellant/second opposite party and the fourth respondent in this appeal liable to pay the awarded amount jointly and severally. As such, the order is erroneous and prayed to set-aside the same against the appellant/second opposite party.

During hearing Sri P. Phalguna Rao, learned counsel for the appellant mainly contended that when the policy did not cover the risk of helper or cleaner, the Insurance Company cannot be saddled with any liability to pay compensation and drawn attention of this Court to

IMT 19 and the terms and conditions of the policy while placing reliance on the judgment of this Court reported in **and K. Sareswara Rao v. Kakaraparthi Anjali Devi and others**[1] and prayed to set-aside the award against the appellant/second opposite party.

Per contra, Sri Jayanthi S.C. Sekhar learned counsel for the respondents would contend that when the Insurance Company collected premium of Rs.15/- covering the risk of a person engaged in connection with the operation of the motor vehicle, the appellant/second opposite party is liable to pay compensation and as such, there is no illegality in the order passed by the Commissioner warranting interference of this Court while exercising power under Section 30 of the Workmen's Compensation Act, and prayed for dismissal of the same. In support of his contentions, he relied on the judgment of this Court rendered in "**New India Assurance Company Limited rep. by its Branch Manager, Kadapa v. Pujala Chenchu Nagaiah and others**[2]**".**

Considering rival considerations and perusing the material available on record, the point that arose for consideration is:

> **Whether the Insurance Policy issued by the appellant/second opposite party for the tractor bearing No.AP 31 0779 covered the risk of a helper/cleaner allegedly engaged by the fourth respondent. If so, is the appellant liable for payment of compensation awarded by the Commissioner in W.C.No.28 of 2003?**

P O I N T:

While denying occurrence of accident and engaging of Lova Raju as helper in connection with operation of the tractor and death of Lova Raju, specific contention raised before the Commissioner was that the policy did not cover the risk of helper, since premium of Rs.15/- was collected covering only the risk of driver, whom the fourth respondent engaged in connection with operation of the vehicle, but the Commissioner did not consider this contention in proper perspective and now it is challenged before this Court.

The Commissioner framed as many as five issues and the fourth issue is the relevant issue pertaining to the liability of the appellant/second opposite party and discussed in paragraphs 3,4 & 5 of page no.4 of the order. As seen from the discussion in paragraph 4 of the page 4, the Commissioner adverted to the specific contention that the fourth respondent paid only Rs.15/- to cover the risk of driver, but not the helper or cleaner and that as per Ex.A-3 policy, the licensed passenger carrying capacity as per certificate of registration is shown as "1". Therefore, the Insurance Company/the appellant herein who agreed to indemnify the loss of the fourth respondent covered the risk of employees in the category of liability to public risk and therefore, liable for payment of compensation. In view of the specific finding recorded by the Commissioner under Workmen's Compensation Act, and the specific contention urged before me, it is apposite to advert to the terms and conditions of the policy, since payment of Rs15/- as additional premium to cover the risk of driver engaged in connection with operation of the vehicle is an undisputed fact.

IMT No.19 of the policy deals with legal liability to paid driver employed in connection with the operation of the motor vehicle and it is extracted as under:

> "**IMT 19 – Legal liability to paid driver employed in connection with the operation of Motor Vehicle.**
>
> (For Private Car, Motor Cycle, Taxi, Auto-rickshaw, Tractor & other Miscellaneous Vehicles.)
>
> In Consideration of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the Company shall indemnify the insured against his legal liability under:
>
> The Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of the

this Endorsement, the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to paid driver whilst engaged in the service of the insured in such occupation in connection with the motor vehicle and will in addition be responsible for all costs and expenses incurred with its written consent.

The premium having been calculated and paid while taking insurance of the Vehicle concerned at the rate of Rs.15/- for driver and/or conductor.

PROVIDED ALWAYS THAT

(1) This Endorsement does not indemnify the Insured in respect of any liability in cases where the insured holds or subsequently effects with any insurance company or group of Underwriters a Policy of Insurance in respect of liability as herein defined for his general employees.

(2) The Insured shall take reasonable precautions to prevent accidents and shall comply with all status obligations.

(3) In the event of the Policy being cancelled at the request of the insured no refund of the premium paid in respect of this Endorsement will be allowed.

Subject otherwise to the terms exceptions conditions and limitations of this policy except so far as necessary to meet the requirements of the Motor Vehicles Act, 1988."

In view of IMT 19, when Insurance Company collected premium covering the risk of driver employed in connection with the operation of the motor vehicle, the appellant/second opposite party is liable to pay compensation for the death or injuries sustained by the driver in connection with the operation of the motor vehicle during and in the course of employment.

But the Commissioner based on IMT No.17 of the policy which dealt with legal liability to persons employed in connection with the operation and/or maintaining and/or unloading of goods carrying commercial vehicles concluded that an additional premium for Rs.15/- paid by the fourth respondent can be understood and agreed that notwithstanding anything contained herein to the contrary the company shall indemnify the insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments thereto.

There is a little conflict between these two conditions. IMT 17 deals with legal liability of the Insurance Company to the persons employed in connection with the operation and/or maintaining and/or unloading of goods carrying commercial vehicles. Here, the vehicle involved in the accident is only a tractor (without trailer) and it's seating capacity is '1' it is only an agricultural implement, and normally no helper can be engaged. That too, the tractor alone can be said to be an agricultural equipment and not a commercial vehicle carrying goods. If the tractor is attached with trailer, then it can be used as a commercial vehicle for carrying goods, but here, tractor alone was insured with the company/appellant by the fourth respondent paying for the premium of Rs.15/- covering the risk of a driver.

Rs.15/- premium covered the risk for "employees (vehicle)". Since the premium of Rs.15/- collected is not clear, taking advantage of the same, the claimants contended that the company is liable to pay compensation awarded by the Commissioner and cannot disown its liability having collected premium of Rs.15/- covering the risk of employees engaged in the vehicle. Admittedly, by the time of the alleged accident, a driver was driving the vehicle and thereby question of engaging Lova Raju in connection with operation of the vehicle does not arise, since the seating capacity was only one. When the seating capacity of the vehicle i.e. tractor was one, it can safely be inferred that the premium of Rs.15/- collected from the fourth respondent by the appellant is only to cover the risk of driver employed in connection with operation of the motor vehicle as per IMT No.19. A similar case came up before this Court in **Sareswara Rao's** case, this Court held that the insurance company did not collect additional premium of Rs.15/- to cover the risk of the conductor/cleaner, as per the policy, Insurance Company cannot be fastened with liability to pay compensation as the owner did not pay premium to cover the risk of cleaner and the deceased was a cleaner. If the principle laid down in the above judgment is applied to the present facts of the case, the deceased Lova Raju was a helper whom the fourth respondent allegedly engaged, but not on commercial vehicle carrying goods. Consequently, the Insurance Company is not liable to pay compensation since, no additional premium was collected covering the risk of helper or cleaner.

Per contra, learned counsel for the respondents/claimants while contending that when the Insurance Company is liable to pay compensation though no premium was collected, drawn the attention of this Court to **Pujala Chenchu Nagaiah's** case wherein, this Court held that Insurance Company is liable to pay compensation under Section 147 of the Motor Vehicles Act, to the cleaner who died in accident while working in a goods carriage. The principle laid down in the above judgment has no direct application to the present facts of the case, for the reason that the deceased Lova Raju was neither cleaner nor helper and the risk of such person is not covered by third party policy except liability to pay compensation for the injuries or death of the driver, on account of payment of additional premium of Rs.15/-, the Commissioner under Workmen's Compensation Act dealt with the contentions of appellant/second opposite party but the findings are contrary to the judgments of this Court referred in **Sareswara Rao's** case (referred supra).

The principle laid down in **Pujala Chenchu Nagaiah's** case (referred supra) is not applicable for the reason that the vehicle i.e. tractor is only agricultural equipment with a capacity of one seat and there is no possibility of engaging a helper or cleaner to travel along with the driver on the tractor providing any separate seat. Therefore, Lova Raju though allegedly engaged as a helper, the Insurance

Company cannot be fastened with any liability to pay compensation awarded for the death of Lova Raju. However, the fourth respondent being the owner of the vehicle, who allegedly engaged the services of Lova Raju alone, is liable to pay compensation awarded herein above.

In view of my foregoing discussion, I find that the Commissioner did commit an error in interpreting the terms and conditions of the policy, made the second opposite party and the fourth respondent liable to pay compensation jointly. Hence, by applying the principle laid down by this Court in the judgment in Sareswara Rao's case referred supra, the findings of the Commissioner holding that the appellant/second opposite party and fourth respondent/first opposite party liable to pay compensation jointly and severally is hereby set-aside, while holding that the fourth respondent/first opposite party (owner of the vehicle) is alone liable to pay the compensation.

In the result, the appeal is allowed setting aside the award passed against the appellant/second opposite party while confirming the award against the fourth respondent/ first opposite party (owner of the vehicle).

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

11.08.2016
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[1] 2014 ACJ 1920
[2] 2011 (2) ALT 357