HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.1066 OF 2008

Dated 16-3-2016

Between:

The New India Assurance Co.Ltd., represented by its Divisional Manager, R.S.Road, Kurnool.

..Appellant.

And:

Rajigani Istharaiah and others.

..Respondents.

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JUDGMENT:

This appeal is preferred against order dated 12-9-2005 in W.C.No.22 of 1997 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar.

Respondents 1 and 2 submitted application to the Commissioner for Workmen's Compensation claiming compensation of Rs.1,50,000/- for the death of Rajigany Bheemaiah contending that the deceased was a workman working under the third respondent herein on tractor trailor bearing No.APM 3089 and 3088 on a salary of Rs.600/- per month. Appellant herein i.e., is Insurance company resisted the claim of the claimants mainly on the ground that no premium was paid to cover risk of any labourer working on the vehicle and premium was paid only for driver and therefore, Insurance Company is not liable. Tribunal on a consideration of material on record has not accepted the objection of Insurance Company and granted compensation of Rs.1,38,318/- by taking the wages of deceased at Rs.47/- per day and questioning the same, present appeal is preferred.

Respondents 2 and 3 in spite of service of notice neither appeared in person nor through any advocate.

Heard advocate for appellants and he submitted that Commissioner for Workmen's Compensation ought to have seen that no premium was paid by the third respondent herein covering risk of deceased alleged labourer farm servant and as no premium is paid, Insurance Company is not liable to indemnify compensation. It is further submitted that as per the policy condition, Insurance Company has to cover the risk of the person for whom premium was paid and in the absence of coverage, Insurance Company cannot be held liable and that the order of the Lower Tribunal is erroneous and liable to be set aside.

It is further submitted that tribunal mainly relied on the judgment of Supreme Court in *NATIONAL INSURANCE COMPANY LTD., vs.. PREMBAI PATEL AND OTHERS* ([1]) but the tribunal has wrongly understood the principle laid down in that decision. He further submitted that in that decision, it was clearly held that it is the duty of the owner to take policy to cover his liability and once premium is paid, Insurance Company cannot contend that it has only limited liability in view of the provisions of workmen's Compensation Act. It is further submitted that in *RAMASHRAY SINGHI vs. NEW INDIA ASSURANCE CO. LTD., AND OTHERS* ([2]), Honourable Court has clarified this aspect in view of the same award passed by the lower authority is not tenable and liable to be set aside.

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

POINT:

According to claimants, the deceased was working as farm servant under the employment of third respondent and on the fateful day, he was proceeding on tractor-trailer bearing No. APM 3089 and 3088 to spray pesticides in the agricultural fields of the owner i.e., third respondent herein and that he died during course of such employment. So far as death of deceased, there is no dispute. Only objection of Insurance Company is that no premium was paid covering the risk of labourer or farm servant and that the appellant has no liability. Insurance Policy is marked as Ex.D.1 and Assistant Administrative Officer of the company is also examined as R.W.1. He deposed in his evidence supporting the plea taken in the counter that premium has not been collected to cover the risk of deceased and therefore, Insurance Company is not liable. This part of evidence and the contention of Insurance Company was not accepted by tribunal on the ground that in *NATIONAL INSURANCE COMPANY LTD., vs.. PREMBAI PATEL AND OTHERS* (1st cited), Honourable Supreme Court held that the liability of Insurance Company is unlimited in respect of claim under Workmen's Compensation Act. Now it may be useful to examine decision referred to in the order of the lower tribunal. Honourable Supreme in the above referred case held as follows:

> *"The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen's Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy."*

From a reading of the above para, it is clear that the Supreme Court clarified that a owner has to take a policy covering the liability in respect of death or bodily injury to any employee and pay premium to fasten liability on the Insurance Company and then only the Insurance Company become liable to satisfy the entire award.

Here admittedly, no premium was paid covering the risk of deceased.

As rightly pointed out by advocate for appellants, when the premium was not collected covering the risk of any employee, the Insurance Company cannot be held liable either for the death or bodily injury caused to such employee even during the course of employment. The lower tribunal has wrongly understood the principle laid down in the above referred Supreme Court decision.

I n *RAMASHRAY SINGHI vs. NEW INDIA ASSURANCE CO. LTD., AND OTHERS* (2nd cited) Honourable Supreme Court observed that a comprehensive policy merely means that the liability sustained by person/persons will be payable upto the insured amount irrespective of actual loss suffered, but it cannot cover the risk including persons to whom premium was not paid.

Considering the material on record with reference to observations made by Honourable Supreme Court in the above two referred decisions, I am of the view that lower tribunal has committed error in negativing the objections of the Insurance Company and passing award against Insurance Company also fixing liability. When the policy indicates that premium was paid only for driver of the vehicle, risk of the deceased was not covered under the policy, therefore, the Insurance Company cannot be held liable and to that extent, order of the lower authority is liable to be set aside.

This Civil Miscellaneous Appeal is accordingly allowed. No costs.

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

JUSTICE S.RAVI KUMAR

Dated 16-3-2016.
Dvs.

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Dvs

[1] (2005) 6 SCC 172

[2] (2003) 10 SCC 664