HONOURABLE SRI JUSTICE S.RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.2775 of 2003

Dated 12-4-2016

Between:

The New India Assurance Co.Ltd., represented by its Divisional Manager, Tadepalligudem, West Godavari District.

..Appellant.

And:

Denga Laxmi Nagamani and others.

..Respondents.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.2775 of 2003

JUDGMENT:

This appeal is preferred against order dated 30-11-2002 in W.C.No.1 of 2002 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Eluru.

Respondents 1 to 3 herein submitted application to the Commissioner for Workmen's Compensation, Eluru contending that the deceased D.Nagaraju was a coolie on tractor bearing No.AP.37 T 9096 and trailor bearing No.9098 and that he died in an accident during the course of his employment and that they being wife and parents respectively entitled for a compensation of Rs.3,00,000/-.

Insurance Company resisted the claim of claimants and contended that there is no policy for the tractor. He submitted since tractor is a goods vehicle insurance policy is a must but as no premium is paid, the Insurance Company is not liable to pay any compensation. Lower authority conducted enquiry and on a consideration of evidence of P.Ws.1 and 2 and documents Exs.A.1 to A.4 on behalf of claimants and evidence of R.Ws.1 and 2 and documents Ex.R.1 and also Exs.X.1 to X.3 on behalf of Insurance Company, negatived objection of Insurance Company and granted Rs.2,05,763/- as compensation. Aggrieved by the same, Insurance Company preferred the present appeal.

Heard arguments.

Advocate for appellant submitted that as per the policy only tractor is insured and there is no insurance for the trailor and also there is no coverage for the Labour, as no separate premium is paid for the trailor, fixing liability on Insurance Company is illegal and that the order of the lower authority has to be set aside against Insurance Company. It is further submitted that the owner has also not paid any premium to cover the risk of deceased and for that reason, appeal is to be allowed. In support of his argument, he relied on a decision of the Honourable *SUPREME COURT IN UNITED INDIA INSURANCE COMPANY v. SERJERAO AND OTHERS* ([1]) and another Honourable Supreme Court decision in *ORIENTAL INSURANCE CO. VS. BRIJ MOHAN & ORS.* ([2]).

On the other hand, advocate for claimants submitted that findings and point decided in the above referred Supreme Court decisions is not disputed but those decisions have no application to the case on hand since there is payment of premium by the owner, lower authority granted compensation, therefore, the objection of Insurance company is not tenable. He further submitted that the claim is under Workmen's

Compensation Act and there is no denial of employee and employer relationship and when there is payment of additional premium, the Insurance Company is also liable. The lower authority has rightly granted compensation and there are no grounds to interfere with the order of the Commissioner for Workmen's Compensation.

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

POINT:

According to respondents 1 to 3 herein, deceased Nagaraju was working as coolie on the tractor-tailor and on the date of accident, he was under the employment of respondents 4 and 5 herein and as the deceased died during the course of employment, they are entitled for compensation. First claimant is examined as A.W.1 and she reiterated the petition averments and through her documents i.e., F.I.R., M.V.I.Report, P.M.report and Charge Sheet copies were marked and except putting suggestions to this witness, nothing was elicited from her to discredit her testimony. One V.Venkateswarlu is examined as A.W.2 and he deposed that he and deceased used to work under 4th respondent herein on his tractor for loading and unloading purpose on monthly salary of Rs.3,000/- and on the other hand, accident took place at Lakshmaneswaram in the fields of D.Satyanarayana and they loaded the tractor with earth in the field of one D.Satyanarayana and boarded the tractor for unloading same at Lakshmaneswaram and on the way due to rash and negligent driving of the driver, the deceased fell down from the tractor and died. He was also cross-examined on behalf of Insurance Company and except putting suggestions, nothing was elicited from him to discredit his testimony. Against that, Assistant Administrative Officer of Insurance company is examined as R.W.2 and Junior Assistant in the office of Regional Transport Corporation, Bhimavaram is examined as R.W.1.

The objection that the trailor has no insurance was also raised in the lower authority and while dealing with the said point, the lower authority recorded a finding that as per the policy amount was collected under the caption schedule of premium against … Add.. to persons engaged in connection with the operation and/or maintaining and/or unloading of Motor Vehicles .. an amount of Rs.15/- was collected under that head. Lower authority considering the collection of that additional premium negatived the objection of Insurance company on the ground if the tractor is not a goods vehicle, there is no necessity for them to collect additional premium for the persons engaged in connection with operation and/or maintaining and/or unloading etc., and as the premium was collected under separate head, it has drawn a presumption that trailor was also included and the workmen’s compensation Act being a beneficial Legislation extended benefit towards the claimants.

As rightly pointed out by advocate for claimants, both the above referred decisions of the Honourable Supreme Court, have no application to the facts of this case in view of the fact that Insurance Company collected additional premium.

As rightly observed by the lower authority when the additional premium is paid for operation or maintaining and unloading etc., the same would definitely cover the risk of the labour employed for unloading particularly when the evidence of A.W.2 indicates that on the date of accident, the deceased and himself have loaded the earth into the tractor and while going for unloading it, the unfortunate incident happened. Therefore, lower authority has rightly negatived the objection of Insurance Company and fixed liability on Insurance Company also and I do not find any wrong in the approach of the lower authority.

For these reasons, I am of the view that there are no merits in the appeal and the same is liable to be dismissed.

Accordingly, this Civil Miscellaneous Appeal is dismissed. 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 12-4-2016.
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dated 12-4-2016

Dvs

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[1] 2008(1) ACJ 254

[2] 2007 (6) SCALE 753