

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.309 OF 2009

Dated 19-2-2016

Between:

The New India Assurance Company Limited,
represented by its Branch Manager, Branch Office,
Chinnachowk, Kadapa.

..Appellant.

And:

Syed Nabee Saheb and others.

..Respondents.

-
-

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.309 OF 2009

JUDGMENT:

This appeal is preferred questioning order dated 25-8-2008 in W.C.No.166 of 2005 on the file of Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Kadapa.

Respondents 1 to 3 herein approached Commissioner for Workmen's Compensation claiming compensation of Rs.4,00,000/- for the death of Syed Shabbir contending that the deceased died on 15-6-2005 at 1.30 P.M., while discharging his duties as cleaner on vehicle bearing No.AP27-T-6225 belonging to 4th respondent herein insured with the appellant. They further contended that deceased was earning Rs.4,000/- per month as cleaner and he was the only bread winner of family, due to his death, respondent 1 to 3 herein lost their livelihood and they are completely depended on the income of deceased and that they are entitled for compensation of Rs.4,00,000/- with interest at 12% per annum.

Insurance Company resisted claim of respondents 1 to 3 herein and contended that driver had no valid driving

licence and that the Insurance Company is not liable to pay compensation for violation of policy conditions.

Lower authority conducted enquiry and on a consideration of oral and documentary evidence and contentions of both parties granted compensation of Rs.3,02,988/- besides stamp duty of Rs.605/- and aggrieved by the same, Insurance company preferred present appeal.

Heard arguments.

Advocate for appellant submitted that lower authority failed in properly applying the case of *NATIONAL INSURANCE COMPANY LTD., Vs. SWARAN SINGH* ([\[1\]](#)) to the facts of this case and compensation granted by lower authority is not sustainable. He further submitted that the lower authority failed in recording that employees are not third parties and that Insurance Company is liable to pay compensation. He further submitted that there is no evidence to show that deceased was under employment of 4th respondent herein and the lower authority is not right in discarding the objections of the Insurance Company.

On the other hand, advocate for claimants submitted that there is evidence on record to show that deceased was working as cleaner on the vehicle belonging to 4th respondent herein and the lower authority has rightly recorded that there is employee and employer relationship between deceased and 4th respondent herein. He further submitted that lower authority has rightly applied the principle in *SWARAN SINGH* case (1st cited) and even recorded that Insurance Company has to first pay compensation to claimants and then recover the same from owner i.e., 4th respondent herein and therefore, there is nothing wrong in the award of the lower authority.

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

correct and proper?

POINT:

As seen from the record, deceased Syed Shabbir was working as cleaner on Mini Lorry bearing No. AP27-T-6225 belonging to 4th respondent herein and on the fateful day, he was on duty as cleaner on the said vehicle along with the driver and the said vehicle met with an accident, which was due to rash and negligent driving of driver of that mini lorry which dashed a vehicle bearing No.APQ-9598 coming in the opposite direction. The deceased sustained grievous injuries and he succumbed to injuries while undergoing treatment at Government Hospital, Kadapa. Considering the evidence on record, the lower authority took wages of deceased at Rs.2,705-25ps per month as per the wages fixed under G.O.Ms.No.81 dated 29-3-2001 and calculated compensation and directed the Insurance Company to pay that amount initially and then, recover the same from owner as per the principle laid down in *SWARAN SINGH* case (1st cited).

Now the main contention of advocate for Insurance Company is that lower authority was not right in treating deceased as employee of 4th respondent herein as there was no evidence on record. But the said objection is not tenable in view of evidence of A.W.1 who categorically deposed that deceased was cleaner on lorry bearing No.AP27-T-6225, which evidence remained un rebutted.

The next objection of the advocate for Insurance Company is that the trial court has not properly applied judgment of *SWARAN SINGH* case (1st cited) but this objection is also not tenable and the lower authority by following principle laid down in that decision, gave liberty to Insurance company to pay and recover, therefore, both the objections raised on behalf of Insurance Company are not tenable.

For these reasons, I am of the view that there are no

grounds to interfere with the findings of the lower authority and that the appeal is devoid of merits.

Accordingly, this C.M.A. 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 19-2-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.309 OF 2009

Dated 19-2-2016

Dvs

[\[1\]](#) 2004 ACJ. 1 (SC)