HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.852 of 2004

J U D G M E N T

This appeal is filed by the appellant/opposite party No.2 under Section 30 of the Workmen's Compensation Act, 1923 (for short 'the Act'), aggrieved by the order dated 03.09.2003, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda, in W.C.No.93 of 2002, awarding compensation of Rs.1,95,913/-.

2. The respondent No.1/applicant filed the above W.C under Section 19(1) of the Act, claiming compensation of Rs.3,00,000/- on account of the death of her husband Mr.Marapaka Yedukondalu @ Konda (hereinafter referred to as 'the deceased') in a motor vehicle accident that occurred on 17.01.2001.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in W.C.

4. The brief averments made in the petition are that the deceased worked as a cleaner on lorry bearing No.AP.16W.2199, which belonged to opposite party No.1. He was aged 22 years at the time of accident. On 17.01.2001 at about 5:00 a.m, while the deceased was travelling on the said lorry as cleaner to Vijayawada, the driver of the vehicle drove it in a rash and negligent manner on NH-5 road, as a result of which the lorry collided with another lorry bearing No.ATQ.6089, went off the road and felt down. Due to the said accident, the cleaner was injured seriously and died. The death of the cleaner occurred during and in the course of employment with opposite party No.1, who insured the vehicle with opposite party No.2. The policy was in force from 19.09.2000 to 18.09.2001. After the accident, the police Veeravelli registered a case in Cr.No.5 of 2001. The opposite party No.1 had personal knowledge of the accident and hence, no prior notice was given to her before preferring the application for compensation. The deceased was receiving Rs.2,500/- p.m towards wages and finally the applicant prayed the Court to grant compensation of Rs.3,00,000/- along with interest at 18% p.a.

5. Before the Commissioner, opposite party No.1 remained *ex parte.*

6. The brief averments made in the counter filed by opposite party No.2 are as follows:

The opposite party No.2 denied each and every allegation made by the applicant in the application. It put the applicant to prove the manner of accident, age and income of the deceased and stated that there is no negligence on the part of the driver of the lorry and therefore, the opposite party No.2 is not liable to pay any compensation and finally prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Commissioner framed three issues and to substantiate the applicant's claim, AW.1 was got examined and Ex.A1 to A5 got marked. On behalf of the contesting respondent, no oral evidence was marked but Ex.B1 got marked by consent.

8. After considering the oral and documentary evidence, the Commissioner held that the deceased died during the course of employment with opposite party No.1 and awarded compensation of Rs.1,95,913/- along with interest at 9% p.a to the applicant against both the opposite parties.

9. Aggrieved by the order, dated 03.09.2003, passed by the Commissioner for Workmen's Compensation, opposite party No.2 filed the present appeal.

10. The learned counsel appearing for the appellant/opposite party No.2 only contended that the deceased was driving the vehicle at the time of accident and he does not possess any valid license. It is also argued that in view of the judgment rendered by the Hon'ble Supreme Court in ***National Insurance Company Ltd., v. Swaran Singh and others***, opposite party No.2 is entitled to recover the amount from opposite party No.1 as the deceased drove the vehicle without any driving license and that the opposite party No.1 violated the conditions of the policy, and prayed the Court to pass an order to recover compensation from opposite party No.1 after paying the amount to the applicant.

11. On the other hand, the learned counsel for the respondent No.1/applicant argued that they have no objection to pass the above such order fixing the

liability on the first respondent in view of the judgment in ***Swaran Singh's case*** (first cited supra) followed by ***National Insurance Co. Ltd., v. Baljit Kaur and Ors.,***, wherein the Hon'ble Supreme court held that the Insurance Company may be directed firstly to satisfy the award and to recover the compensation awarded from the owner of the vehicle by initiating proceedings before the executing Court without filing a separate suit for the said purpose.

12. Having regard to the submissions made by the learned counsel appearing for both parties, the point which is to be decided in this appeal is as follows:

> Whether the appellant is entitled for exoneration of payment of compensation awarded by the Commissioner as prayed for?

13. A perusal of the record shows that the deceased was working as a cleaner with opposite party No.1 on the lorry bearing No.AP.16W.2199 and on 17.01.2001, the accident occurred, in which he died. According to respondent No.1/applicant, the deceased was aged about 24 years and getting income of Rs.2,500/- p.m and also Rs.20/- per day as batta. The only contention of the appellant/opposite party No.2 is that at the time of accident, the deceased was driving the vehicle and he did not possess any driving license, as such the Insurance Company got every right to recover the compensation awarded to be payable by opposite party No.1 as he committed violation of the conditions of the policy Ex.B1 as it is an admitted fact that the cleaner of the vehicle drove the vehicle on the date of accident and the driver was present in the cabin. Further, in a decision reported in ***National Insurance Co. Ltd., v. Baljit Kaur and others***, it is held by the Hon'ble Supreme Court as follows:

> *"7. In the case of* ***New India Assurance Co. Ltd.*** *v.* ***Asha Rani*** [2003 ACJ 1 (SC)], *it was held that the previous decision in* ***Satpal Singh Case*** [2000 ACJ 1 (SC)], *was incorrectly rendered, and that the words "any person" as used in Section 147 of the Motor Vehicles Act, 1988, would not include passengers in the goods vehicle, but would rather be confined to the legislative intent to provide for third party risk. The question in the subsequent judgment in* ***Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy*** [2003 ACJ 468 (SC)], *involved, as in the present case, the liability of the insurance company in the event of death caused to a gratuitous passenger traveling in a goods vehicle. The Court held that the Tribunal and the High Court were not justified in placing reliance upon* ***Satpal Singh case (supra)****, in view of its reversal by* ***Asha Rani (supra)****, and that, accordingly, the insurer would not be liable to pay compensation to the family of the victim who was traveling in a goods vehicle.*

18. The observations made in this connection by the Court in Asha Rani case (supra) to which one of us, Sinha, J, was a party, however, bear repetition:

> *"26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger traveling in a goods vehicle, the insurers would not be liable therefore."*

21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the tact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be subserved if the appellant, herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer:"

14. Therefore, in view of the ratio laid down in the decisions cited supra, it is ordered that the appellant/opposite party No.2 is not entitled for any exoneration of payment of compensation, but has to pay the awarded amount to respondent No.1/ applicant and then recover the same from the owner of the vehicle i.e., respondent No.2/opposite party No.1 by initiating the proceedings before the executing Court without filing a separate suit for the said purpose.

15. Accordingly, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 16.02.2016

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