

HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.109 of 2005

J U D G M E N T:

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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 award dated 05.11.2004, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle-I, Visakhapatnam, in W.C.No.56 of 2003, awarding compensation of Rs.3,59,698/- to the applicants.

2. The respondents/applicants filed the above W.C. under Workmen's Compensation Act, claiming compensation of Rs.4,27,140/- on account of the death of the deceased by name, K.Naga Raju, who died in a motor vehicle accident that occurred on 30.01.2003.

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

4. The brief averments made in the petition are as follows:

The applicants filed the petition under the Act claiming compensation of Rs.4,27,140/- for the death of one K.Naga Raju, aged about 27 years in a motor vehicle accident. The claimants are wife, son, daughter and parents of the deceased and they stated that the deceased was working as the driver of a van bearing registration No.AP 31W 6047 for a monthly wage of Rs.4,000/- with the owner/opposite party No.1 and on the date of accident, he was proceeding from Chennai to Cuttuck with the load of mosquito coils and when the vehicle reached near Dwaraka Tirumala at about 6.00 p.m., his vehicle collided another lorry bearing registration No.WB 03 4508, which resulted in the death of late Naga Raju. The police registered a case in Crime No.6 of 2003 under Section 304-A I.P.C. The claimants are dependants on the income of the

deceased. Therefore, they are entitled for compensation against both the respondents since the deceased Naga Raju died during the course of his employment with opposite party No.1.

5. The brief averments made in the counter filed by the opposite party No.1/owner are as follows:

The respondent No.6/opposite party No.1 admitted his relationship as an employer with the deceased stating that the deceased was working as driver on monthly wages of Rs.4,000/- and that there was valid insurance coverage to his vehicle and prayed the Court to dismiss the petition against him.

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

It denied the employment of the deceased with opposite party No.1, the manner of accident, age and income of the deceased and involvement of the vehicle. It submitted that the applicants need to prove that the deceased died during the course of his employment and that he was holding a valid and subsisting driving license at the time of accident. While submitting that the claim of compensation of Rs.4,27,140/- is high and excessive and the claimants are not entitled for compensation, it stated that the monthly salary of the deceased was only Rs.2200/- and that the compensation should be restricted under provisions of the Act. Finally, it prayed to dismiss the W.C.

7. Basing on the above pleadings, the Assistant Commissioner of Labour framed five issues and to substantiate the applicants' claim, AW.1 and AW.2 were examined and Exs.A1 to A8 were marked. On behalf of the opposite parties, RWs.1 to 3 were examined and Exs.B1 to B8 were marked.

8. After considering the oral and documentary evidence, the

Assistant Commissioner of Labour held that the deceased died during the course of his employment and awarded compensation of Rs.3,59,698/-.

9. Aggrieved by the order passed by the Assistant Commissioner of Labour, the insurance company preferred the present appeal.

10. The learned counsel appearing for the appellant/insurance company argued that the insurance company is not liable to pay any compensation as the driver of the vehicle i.e., deceased does not possess valid driving license at the time of accident and relied upon

Jawahar Singh v. Bala Jain^[1], wherein the Hon'ble Supreme Court held at paras 10 & 12 as follows:

"10. On behalf of Respondent No.6, National Insurance Company Ltd., it was sought to be urged that at the time of the accident, the motorcycle was being driven in breach of the terms and conditions of the Insurance Policy and, accordingly, the Insurance Company could not be held liable for making payment of the compensation awarded by the Motor Accident Claims Tribunal. Apart from the fact that Jatin, who was riding the motorcycle, did not have a valid driving licence, it had also been established that he was a minor at the time of the accident and consequently the Insurance Company had been rightly relieved of the liability of payment of compensation to the Claimants and such liability had been correctly fixed on the owner of the motorcycle, Jawahar Singh.

12. Before the Tribunal reliance was also placed on the decision in the case of National Insurance Co. Ltd. Vs. G. Mohd. Vani & Ors. [2004 ACJ 1424] and National Insurance Co. Ltd. Vs. Candingeddawa & Ors. [2005 ACJ 40], wherein it was held that if the driver of the offending vehicle did not have a valid driving licence, then the Insurance Company after paying the compensation amount would be entitled to recover the same from the owner of the vehicle. It was submitted that no interference was called for with the judgment and order of the High Court impugned in the Special Leave Petition."

Finally prayed the Court to exonerate the appellant/insurance company

from paying the compensation.

11. On the other hand, the learned counsel for the claimants/respondents argued that after considering the oral and documentary evidence, the Assistant Commissioner of Labour rightly awarded compensation and that the finding of the Assistant Commissioner of Labour does not require interference. It is further argued that the driver was possessing valid driving license at the time of accident and that the claimants are none other than the family members of the deceased, who were suffering due to his untimely death. Therefore, the Assistant Commissioner of Labour after considering the evidence of both sides passed the order by awarding compensation of Rs.3,59,698/- as just compensation and prayed the Court to dismiss the appeal.

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-insurance company is entitled to the relief of setting aside the award dated 05.11.2004 passed by the Assistant Commissioner of Labour, Circle-I, Visakhapatnam?”

13. A perusal of the oral and documentary evidence shows that the deceased Naga Raju was working with RW.1; that during the course of his employment, he died due to rash and negligent driving of the driver of lorry bearing registration No.WB 03 4508 which came from opposite direction, and that the claimants, who are his wife, children and parents filed the application claiming compensation of Rs.4,27,140/-.

14. The main contention of the appellant is that the deceased was not having valid driving license to drive the vehicle and it was valid upto 1999, whereas the accident occurred in the year 2003. Therefore,

insurance company is not liable to pay any compensation.

15. A perusal of the case law relied upon by the appellant i.e., **Jawahar Singh's** case (cited supra) in para-12 , it was held that the insurance company after paying the compensation amount would be entitled to recover the same from the owner of the vehicle. It is settled proposition of law that in **National Insurance Co. Ltd., v. Baljit Kaur and Ors.**,^[2] it was held as follows:

"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 fact 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:"

16. Therefore, in view of the aforesaid ratio laid down in the decision, it is ordered that opposite party No.2/Insurance Company has to pay the awarded amount to the respondents/claimants and then to recover the same from opposite party No.1/owner of the vehicle by initiating the proceedings before the executing Court without filing a separate suit for the said purpose.

17. Accordingly, the appeal is partly allowed. No order as to costs.

18. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

Date:15.02.2016
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[\[1\]](#) (2011)6 SCC 425
[\[2\]](#) 2004 (1) SCALE 124