HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.325 OF 2005

JUDGMENT:

A short question involved in the present Civil Miscellaneous Appeal is, whether the risk of the cleaner is covered by the policy issued by the Insurer - appellant?.

2. The applicant in W.C. No.6 of 1998 NF on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, who is respondent No.1 herein, is working as a Cleaner on Jeep bearing registration No.AP 1C 111, under the employment of opposite party No.1, who is respondent No.2 herein. The submission of the learned Standing Counsel for the appellant - opposite party No.2 has been that no premium was paid covering the risk of the cleaner nor any additional premium was paid by the employer - respondent No.2. The policy makes it very clear in that regard. The policy was also examined by the Commissioner under the Workmen's Compensation Act, 1923. The learned counsel has drawn the attention of this Court to the relevant paragraph in the order at page No.4, which reads thus:

> "The contention of the Opposite Party No.2 and the evidence of RW1 is to the effect that the policy does not cover the risk of the cleaner and the policy covers the risk of the third party and the driver only. But the fact remains on record that RW1 in the cross examination admitted that the policy is a comprehensive policy. Further Ex.B1 shows that it was issued for passenger carrying vehicle.

> Therefore, it cannot be said that the risk of the cleaner is not covered when the insurance Policy is comprehensive policy, thereby the Opposite Party no.2 cannot be absolved from its liability to indemnify the liability of the insured the Opposite Party No.1."

3. The Commissioner under the wrong assumption that a comprehensive policy covers the risk of every person, ignoring the fact that the terms and conditions of the contract would not bind the Insurance Company to compensate the cleaner, in which case, the employer ought to have paid the premium or at least additional premium; the Commissioner observes stating that the fact remains on record that RW.1, in his cross-examination, admitted that the policy is a comprehensive policy and thereby fixed the liability on the Insurance Company. The Commissioner, thus, went wrong in appreciating the terms of contract between the Employer and the Insurance Company and the terms and conditions of the policy. It is not the question of nature of policy that determines the liability in a case falling under the provisions of the Special Statute. Thus, the Commissioner misdirected himself in mulcting liability on the appellant herein. The order is, therefore, liable to be set aside.

4. The learned counsel for the appellant would submit that as directed by this Commissioner, the appellant deposited the entire amount, and while admitting the present appeal, this Court granted stay of disbursement to the extent of half of the compensation awarded by the Commissioner. In case the applicant has not

withdrawn any amount, the appellant is at liberty to take back the deposited amount along with interest accrued thereon, while the applicant is at liberty to recover the awarded amount from the Employer - opposite party No.1. If the applicant has withdrawn any amount from the deposited amount, the appellant is at liberty to recover the withdrawn amount from opposite party No.1 and applicant shall recover the remaining half of the amount from the employer - opposite party No.1.

5. The present appeal is, accordingly, allowed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 08, 2017.
Mgr