

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.3384 of 2002

JUDGMENT:

The present appeal is preferred by opposite party No.2 in W.C.No.7 of 2000, incidentally, the Divisional Manager of United India Insurance Company Limited, Vijayawada, questioning the liability fixed on it to pay the compensation of Rs.1,95,030/-, which, in fact, was deposited in compliance with the order dated 27.06.2001 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1, Guntur, in the said W.C., on the main ground that the deceased Dara Baburao, whose legal representatives are the applicants – respondents 1 to 5 herein, was not possessing any driving licence at all to drive the Heavy Goods Vehicle.

The aforesaid ground alone is the controversy between the parties in the present appeal.

Heard Sri E.Venugopal Reddy, learned counsel for the appellant, and Sri Venkateswarlu Posani, learned counsel for respondent Nos. 1 to 5.

The appellant's main stand is that the deceased Dara Baburao did not possess any driving licence at all. In that direction, the Superintendent of Road Transport Office, Nalgonda, was summoned and examined as R.W.1 on summons. The evidence of R.W.1 was to the effect that they issued driving licence No. 692/85 to one B. Srinivasarao, who is the other driver, but not the deceased, to drive the two-wheeler

only and the same is marked as Ex.R1. According to the Commissioner's observation, even RW.1 brought heavy endorsement register to the Court and the copy of the endorsement, dated 13.03.1985, of the said register was exhibited as Ex.R2. RW.1's evidence is to the effect that the deceased did not get endorsement of HGV, indicating Heavy Goods Vehicle, on the date of accident. The endorsement of one Sri Venkateswarlu, son of T. Somaiah, is marked as Ex.R3, but, somehow, the Commissioner, having got confused, as seen from the observations he made in the order under challenge, overlooked the contention raised by the opposite party relying on the decision of the Hon'ble Supreme Court in **New India Assurance Company, Shimla v. Kamala and others**¹ and then directly dealt with the First Information Report entries and, having found the name of the deceased, Dara Baburao as the driver at the time when the accident took place, determined the compensation applying the formula and arrived at Rs.1,95,030/-, to which the legal heirs are entitled according to him.

The submission of the learned counsel for respondent Nos.1 to 5 is based on the driving licence entry marked as Ex.R1, which does not belong to the deceased Dara Baburao, but belongs to B.Srinivasarao. Though, the learned counsel would contend that no evidence was let in by opposite party No.2, but examining the Superintendent of Road Transport Office, Nalgonda, as RW.1, through whom the relevant facts were elicited and Exs.R1 to R3 were marked, is sufficient to hold that the onus resting on opposite party No.2 was satisfactorily discharged and

¹ 2001 (3) ALD 24 (SC)

when shifted to the applicants, they did not do anything in the direction of proving that the deceased did possess and hold a valid subsisting driving licence to drive the Heavy Goods Vehicle. Thus, so far as the appellant is concerned, the finding recorded by the Commissioner suffers from patent illegality warranting to set it aside and, accordingly, the same is set aside. The appellant is, thus, not liable to pay the compensation to respondent Nos.1 to 5 herein, who are the legal representatives of the deceased. However, it is open to respondent Nos. 1 to 5 to recover the amount minus the amount which they have withdrawn from out of the amount deposited by the appellant, as per their respective shares, from the owner of the vehicle. The appellant is at liberty to recover the amount withdrawn by respondent Nos. 1 to 5 from the owner of the vehicle, who is opposite party No.1 in the W.C., and it is also open to the appellant to seek for return of the balance amount lying to the credit of W.C.

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

Miscellaneous applications, if any pending in the instant appeal, stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

August 21, 2017
v v