

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CMA No. 842 of 2006

ORDER:

This is an appeal filed against the order dated 23.11.2005 passed in WC.No.63 of 2003 by the Commissioner of Workmen's Compensation and Assistant Commissioner of Labour, Ananthapur.

The appellant before this Court is the New India Assurance Company-respondent No.2 in the lower Court. The case is filed in the lower Court by the legal heirs of one Sri B.Vijay Kumar, who died in an accident when the car he was driving came under the wheels of a train and he died instantly. Claiming compensation of Rs.4,00,000/- with interest the present application was filed. Respondent No.1 denied all the allegations made in the case and raised an important issue that the deceased was working under one Sri Ram Mohan Gupta at the time of the accident and that therefore, the opposite party No.2 is not liable to cover the accident. They also urged that the deceased-driver was in the employment of Sri Ram Mohan Gupta and therefore, the insurance company has no privity with the said Mr. Ram Mohan Gupta. The opposite party No.1 is the person who has actually insured the car.

Based on the pleadings, the matter went trial and in the trial, the oral evidence was taken on behalf of the applicant

and Exs.A.1 to A.8 were marked. On behalf of the respondents also, oral evidence was let in and Exs.B.1 to B.3 were marked. After hearing the parties and considering the evidence on record, the Commissioner came to a conclusion that a sum of Rs.2,14,741/- along with stamp duty and interest is payable to the applicants. However, only opposite party No.1 is made liable to pay the principal and the interest while opposite party No.2 was not liable for the interest on the compensation. Against the said order, the present appeal is filed.

Although the Commissioner did not award interest, as far as the insurance company is concerned, still a ground is raised for the same. The learned counsel after examining the impugned judgment conceded that the said ground was erroneously raised.

The essential question that falls for consideration in this case is, whether the driving of the car by the deceased on behalf of a friend of his owner exonerated the insurance company from all liability. The facts of the case makes it clear that at the crucial point of time, when the accident occurred, the vehicle in question was given to one Sri Ram Mohan Gupta for use because of a wedding in his family.

Therefore, the learned counsel for the appellant-insurance company contends that in view of the admitted facts, the insurance company is not liable as they do not have any contractual or other relationship with the said Ram Mohan

Gupta. The counsel contends that Sri Gupta is the “employer” of the workman and therefore, they are not liable.

The evidence of AW.1 is clear and she deposed in her cross-examination that her husband was working as a driver under the Ram Mohan Gupta for 15 days. She admits that her husband told her that he was going to Adoni along with the relatives of the owner of the car. AW.3 is Mr. Ram Mohan Gupta, who admits that he requested opposite party No.1 namely Mr. Balaji Rao to spare his car for a wedding in the family. The deceased-Vijay Kumar was the driver of the said car. He denied the suggestion that the deceased-Vijay kumar was under his “employment”.

In fact, it is important to note that the said Balaji Rao also filed his counter in the Court, wherein he clearly averred that the car was given to his close friend Sri Ram Mohan Gupta for marriage alliance purpose and he clearly avers that the car was used for social, domestic and pleasure purposes only and not for hire. He also gave evidence as RW.1. In the cross-examination. He clearly admits as follows to a suggestion that was put by the counsel for the opposite party No.2 “it is it true that I gave my car to Ram Mohan Gupta on free of cost”. Therefore, the suggestion that was put to the witness, which led to the above answer, clearly is to the effect that this witness gave his car to Mr Ram Mohan Gupta on a free of cost basis. He also denies the suggestion that the deceased was in his employment on the date of the accident.

The other important document to be considered is Ex.B.2 policy, which clearly states that the vehicle can be used for social, domestic and pleasure purposes only and it covers any person, who is driving on the insurance order or with his permission. It also states that the Driver should have a valid licence. All these conditions are fulfilled in this case. The witness for the insurance company, who deposed did not have any personal knowledge of the case. He admits in his cross-examination that he does not know whether Sri Ram Mohan Gupta, a friend of opposite party No.1, took the vehicle from opposite party No.1 for marriage alliance purpose 15 days prior to the accident. He does not know whether the vehicle was plied for hire or not. He does not know whether the vehicle was arranged on friendly basis. He also admits that the policy is on force. He also admits in his cross-examination for opposite party No.1 that if the deceased is a workman of opposite party No.1, company is liable to pay, otherwise not liable.

On a review of all the facts in this case, it is clear that on the date of the accident and at the critical time, the deceased was driving the vehicle near Adoni for Mr.Ram Mohan Gupta. There is no evidence to show that the said Mr.Ram Mohan Gupta was paying wages or that the deceased was under his "total control". The witness for the insurance company also does not have any personal knowledge about the facts of the case. The mere fact that the deceased was

driving the car when it was given to said Mr Gupta for 15 days will not in any way create an employment or an employer/employee relationship between the deceased and the said Gupta. Out of friendship, the car was given for a period of 15 days. Therefore, an employer/employee relationship between the deceased and Mr. Ram Mohan Gupta cannot be spelt out from the available evidence.

The learned counsel for the appellant also cited judgment reported in ***Zila Sahakari Kendrya Bank Maryadit v. Shahjadi Begum and Others***¹. This was a case of a vehicle which was requisitioned by a statute. The Hon'ble Supreme Court of India noticed that in that case, it has been found, as a fact by the Commissioner of Workmen's Compensation that the deceased was under the complete control of the requisitioning authority. He would, therefore, be the employer. As the jeep was requisitioned under a statute, the Bank had no other option but to put the same under the services of the requisitioning authority. In terms of requisition, the services of the deceased, thus, were also placed. The employer would be the requisitioning authority, namely, the State of M.P.

The same is not the case in the present appeal. There is no finding of fact that the deceased was under the complete control of Mr Ram Mohan Gupta. The terms of the requisition are not elicited anywhere in the evidence. The temporary

¹ (2006) 11 SCC 692

lending of a jeep between friends cannot be equated to the requisitioning by the Government under a statute. Therefore, this Court is of the opinion that the judgment cited by the learned counsel for the appellant is not strictly relevant to the facts and circumstances of the case. It is clear from the judgment that the Government of that State requisitioned the jeep for election duty, therefore, the services of the deceased were also put under the control of the Election Officer. The facts of the case and the findings there are not applicable to this case. Therefore, this Court is of the opinion that mere fact that the services were temporarily lent to Mr. Gupta will not exonerate opposite party No.2 from paying the compensation.

Therefore, this Court is of the opinion that the order passed by the lower Court is valid and in order.

As far as the principal amount is concerned, both the appellant and the respondent No.6/owner are liable. As far as interest is concerned, in terms of the directions of the lower Court, the opposite party No.2/Insurance Company is not liable to pay any interest.

In view of the above discussion, the appeal is dismissed confirming the order of the lower Court. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date:06.12.2017
KLP