

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**CIVIL MISCELLANEOUS APPEAL No.1055 OF 2008**

**JUDGMENT:**

The present appeal is preferred by Opposite Party No.3 - M/s. National Insurance Company Limited in W.C. Case No.18 of 2005 under Section 30 of the Workmen's Compensation Act, 1923 (for short 'Act'), assailing the order dated 31.08.2005 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Eluru (for short 'Commissioner'), awarding a compensation of Rs.2,59,028/- for the death of cleaner of Mini Van bearing registration No.AP 37W 1269, which met with an accident on 11.09.2004.

2. Heard Sri Kota Subba Rao, learned standing counsel for appellant - opposite Party No.3, Sri Ch. Dhanamjaya, learned counsel for respondent Nos.1 and 2 - applicants, and Sri K. Jyothi Prasad, learned counsel for respondent No.4 - opposite party No.2. In the cause title of grounds of appeal, it is shown that respondent No.3, who is opposite party No.1, is not a necessary party.

3. Respondent Nos.3, 4 and the appellant herein, who are driver, owner and insurer of the aforesaid vehicle, are opposite party Nos.1 to 3 respectively, in the aforesaid W.C. Case, while respondent Nos.1 and 2 are applicants.

4. For the sake of convenience, the parties herein are referred to as they were arrayed in the W.C. Case.

5. The main ground agitated by the learned standing counsel for the insurance company is that Ex.B-1, insurance policy, does not cover the risk of the cleaner. A copy of the policy was also marked as Ex.A-5 on behalf of the applicants. The Commissioner though, such an objection was raised, somehow, did not go into that aspect. In one of the paragraphs at page No.3 of its order, while vaguely referring to the liability of opposite parties, he would record that as per Ex.A-1, the deceased was employed by opposite party No.2, and as per Ex.B-1, the vehicle was insured with opposite party No.3 and, therefore, opposite party No.2 being employer and owner of the vehicle and opposite party No.3 being insurer are jointly and severally liable for payment of compensation. However, he dismissed the claim against opposite party No.1, who was the driver at the relevant time. The authority did not discuss the said aspect. When it is the case of the insurer that the policy did not cover the cleaner's risk, the Commissioner ought to have dealt with the said aspect in depth referring to the contents of policy. What is observed in the said paragraph is nothing but an observation made or finding recorded in a routine manner without application of mind. Had Ex.B-1 policy examined thoroughly, the said approach would have been averted. On perusal of copy of Ex.A-5, in the second page, it shows that a sum of Rs.3,480/- was paid towards T.P. basic; Rs.200/- towards third party property damage of 6000 IMT - 20; Rs.100/- towards compulsory PA to owner-driver up to a limit of 200000. The word "cleaner" is not

finding place and no amount is occurring as having been paid. At least towards additional premium, no amount was paid by the owner of the vehicle. Thus, it is clear that the risk of the cleaner is not covered. Therefore, the Commissioner went wrong in fastening liability on the insurer to pay compensation determined by him.

6. Now, the question is, whether the amount withdrawn by the applicants can be ordered to be repaid. As per the orders of this Court dated 09.08.2006 in C.M.P. No.1412 of 2006, 50% of the amount deposited was permitted to be withdrawn by the applicants without furnishing any security. In such an event, if the said amount is not available, it is open to opposite party No.3 - insurer to recover the amount withdrawn by the applicants from the owner of the vehicle i.e., opposite party No.2 in the aforesaid W.C. Case. It is open to the applicants to recover the other 50% of the amount from the owner of the vehicle - opposite party No.2. The opposite party No.3 in W.C. i.e., appellant herein is permitted to seek return of the remaining 50% of the amount lying to the credit aforesaid W.C. Case.

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

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

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**A. SHANKAR NARAYANA, J**

**August 16, 2017.**  
Mgr