

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.4720 OF 2004

JUDGMENT:

The main ground agitated in the present appeal preferred by Opposite Party No.2 - M/s. National Insurance Company Limited in W.C. No.48 of 2004 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour - II, Hyderabad (for short 'Commissioner'), is that the policy does not cover hamali and, therefore, the Commissioner went wrong in fastening liability on insurer. Second, the Commissioner ought not to have taken 100% disability or loss of earning power of respondent No.1, who is applicant in the aforesaid W.C., when the medical evidence shows the physical disability at 50% opining that the patient has to walk with support.

2. Heard Mrs. M. Bhaskara Lakshmi, learned standing counsel for the appellant - opposite party No.2, and Sri M. Krishna Reddy, learned counsel for respondent No.1 - applicant. Though, notice was served on respondent No.2 - opposite party No.1, none appears for him.

3. Concerning whether the policy covers the risk of applicant or otherwise, the Commissioner in paragraph No.19, just refers to Ex.D-1 and Ex.A-8 stating that Ex.A-7 is registration certificate of the vehicle and Exs.A-8 and D-1 are the insurance policy documents, and

in all three documents, opposite party No.1 is shown as registered owner of the vehicle and vehicle was insured with opposite party No.2 in favour of opposite party No.1 and, therefore, opposite party No.1 as an employer of the applicant and owner of the insured lorry and opposite party No.2 as insurer of the lorry, are both jointly and severally liable to pay compensation to the applicant for the loss of earning capacity suffered by the applicant and the insurance policy issued in respect of the vehicle is valid and subsisting as on the date of accident covering the risk of two employees under the Workmen's Compensation Act.

4. Now, the question is, whether the risk of two employees mentioned in Ex.A-8 and D-1 includes 'hamalies' or whether 'cleaner-cum-labourer' would require a thorough examination. In fact, the applicant described himself as a 'cleaner-cum-labourer' on lorry bearing registration No.AP 7T 459 belonging to opposite party No.1 claiming that he was paid Rs.3000/- per month besides batta at Rs.20/- per day, whereas Ex.A-1, certified copy of first information report, Exs.A-2 and A-3, discharge cards of Nightingale Hospital and Ex.A-4, letter of the Sub-Inspector of Police, Vangoor, would clearly indicate that the applicant was a coolie on the lorry and sustained injuries. The submission of the learned standing counsel is that only to come under the insurance policy coverage, described himself as

‘cleaner-cum-labourer’. This aspect was not properly examined by the Commissioner, and no definite finding was recorded.

5. Therefore, it is desirable to remit the matter to the Commissioner for tendering a positive finding basing on appreciation of evidence on record by examining whether Ex.A-8 and Ex.D-1 would cover the risk of present applicant and also tendering a positive finding whether he was a ‘hamali’ or whether he was a ‘cleaner-cum-labourer’. The proceeding sheet of the case would show that this Court, by order, dated 18.03.2005, permitted the applicant to withdraw half of the amount deposited. The said amount was already withdrawn by the applicant. Necessary orders shall be passed by the Commissioner depending upon the result of the W.C.

6. In the result, the appeal is allowed and the award dated 25.09.2004 passed by the Tribunal in W.C. No.48 of 2004 is set aside remitting the matter to the Commissioner with a direction to tender a positive finding basing on the evidence on record by examining whether Ex.A-8 and Ex.D-1 would cover the risk of applicant and also tendering a positive finding whether he was a hamali or whether he was a cleaner-cum-labourer and to afford a chance if desired by either party to lead further evidence, and shall dispose of the matter within six months from the date of receipt of a copy of the order. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand disposed of.

A. SHANKAR NARAYANA, J

October 23, 2017.
Mgr

