HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.4047 OF 2003

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred by Opposite Party No.2 in W.C. Case No.178 of 2002 F, aggrieved over the order, dated 19.05.2003, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, on the main grounds that the evidence would definitely indicate that the deceased was 18 years old and incompetent to drive a tractor, besides not possessing valid driving license as no driving license to drive a tractor would be issued unless a person has attained 21 years old, and also on the ground that there has been no coverage of insurance policy so far as cleaner is concerned.

2. Heard Sri E. Venugopal Reddy, learned Standing Counsel for the appellant - opposite Party No.2 - Divisional Manager, M/s. United India Insurance Company Limited, and Sri V. Tulasi Reddy, learned counsel for respondent Nos.1 and 2 - applicants. The appeal was dismissed against respondent No.3 - opposite Party No.1, for default, by order dated 18.03.2016.

3. The Commissioner having framed four issues and examining PW.1, marking Exs.A-1 to A-3 on behalf of the applicants, who are parents of deceased - Janigala Ramesh, and RWs.1 and 2 and Exs.B-1 and B-2 on behalf of opposite party No.2 - Insurer, believing the

evidence of RW.1, who is husband of owner of tractor, that the deceased was employed by him as a driver and monthly wages at Rs.3,365/- as minimum wage and taking the age of the deceased as 18 years, applied age factor 226.38 and arrived at Rs.3,80,940/- as compensation and awarded the same, making both the opposite parties i.e., owner and insurer jointly and severally liable to pay the said amount.

4. The learned standing counsel would submit that there cannot be any cleaner employed by the owner of a tractor for the tractor, and the husband of owner of the tractor as RW.1 did not swear to truth and was wrong in stating that he employed the deceased as driver of the tractor and a person aged 18 years is not competent to drive a tractor as unless he attains the age of 21 years, no driving license would be issued by the Road Transport Authority. It is also his submission that the charge sheet - final report filed on completion of investigation would reflect that the deceased was not employed as driver, but he was a cleaner and, therefore, the Commissioner went wrong in holding the deceased as driver as against the contents of final report marked as Ex.B-2. Therefore, it is his submission to set aside the order as it suffers from patent illegality.

5. The learned counsel for the applicants - respondent Nos.1 and 2 would support the order passed by the Commissioner. He would again refer to the evidence of RW.1, husband of owner of the

tractor as regards employment of the deceased as driver and would also submit that the burden is on the Insurer to prove that the deceased did not possess a driving license to drive the tractor, and since no evidence is let in, in that direction by the insurer, no interference is warranted.

6. Contents of Ex.B-2 would clearly show that the deceased was not employed as a driver and, in fact, he was employed as a cleaner. Thus, it contradicts RW.1's assertion that they employed the deceased as driver of the tractor. Even overlooking, for a moment, the said statement of RW.1, still, it is not in dispute that the deceased was 18 years old as on the date of accident, as there has been a definite finding recorded by the Commissioner in his order while calculating the compensation in applying age factor and, therefore, a person aged 18 years old is not only incompetent to drive the tractor, but no driving license would be issued by the Road Transport Authority unless he attains the age of 21 years. This apart, the applicants are not strangers to the deceased as they are parents of the deceased and even they cannot shirk to file driving license if any such driving license was obtained by the deceased. Therefore, viewed from any angle, certainly, the insurer cannot be made liable to pay the compensation for the death of deceased. The Commissioner overlooking all these aspects just went on rendering an order just reading the evidence of PW.1 and RW.1. Thus, there is patent illegality in the finding

recorded by the Commissioner which is liable to be set aside and, accordingly, set aside.

7. Pursuant to the order passed by the Commissioner and before preferring the appellant - insurer deposited the entire amount. As per the orders, dated 07.08.2003, in C.M.P. No.17652 of 2003, stay was granted by this Court and, thereafter, the applicants filed C.M.P. No.25372 of 2003 to vacate the said stay. This Court while making the interim stay absolute on 28.11.2003, permitted the applicants to withdraw 50% of the deposited amount and, according to the learned counsel for the applicants the said amount was withdrawn by the applicants. It was also observed that in the event the appeal being allowed, the insurer would be entitled to all the interest that would accrue on the deposited amount. In the said circumstances, the insurer is at liberty to recover the same from the owner of the vehicle i.e., opposite party No.1 in W.C. Case No.178 of 2002 F, and applicants are also at liberty to recover the balance amount from opposite party No.1, owner of the vehicle.

8. 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 22, 2017.
Mgr