

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

C.M.A.No.729 of 2009

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the New India Assurance Company Limited against the order dated 25.09.2008 in W.C.No.47 of 2005 passed by the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Kadapa.

The case before the Commissioner was filed by the parents of one P. Bala Bhaskar, who died in a jeep accident that occurred on 23.09.2004. The case set up by the applicants is that the deceased was working as a cleaner on the jeep bearing No.AP04-U-5793. While he was travelling in the jeep, he met with an accident and died on the spot. His parents filed the WC case claiming compensation for the death of their son from the owner of the vehicle (OP-1) and insurance company (OP-2) with whom the vehicle was insured.

For the applicants, two witnesses were examined as A.Ws.1 & 2 and Exs.A.1 to A.7 were marked. For OP-1, there was no evidence. For OP-2, R. Himakar, who is an Administrative Officer, Divisional Office, New India Assurance Company Limited, Kadapa, was examined as RW.1. The copy of the insurance policy was marked as Ex.B.1. The Commissioner after considering the entire evidence both oral

and documentary awarded compensation of Rs.2,86,608/-, which is now assailed in the present appeal.

This Court has heard Smt. Kalpana Ekbote, learned counsel for the appellant/insurance company and Sri Kadabani Sudarshan Reddy, learned counsel for the respondents/applicants.

The only point that was urged in the appeal grounds and also argued during the course of hearing is that the deceased was working as a 'cleaner' and that the policy in question issued by the appellant/insurance company did not cover the cleaner. During the course of hearing and based on the record, it was admitted by both the parties that the policy was subsisting and in force as on the date of the accident.

The learned counsel for the appellant argued that the policy does not cover the cleaner of the vehicle and that the premium collected was for 'third party injury' only and to cover five passengers only. The alternate argument of the learned counsel is that the jeep was being used for transport of newspapers and that there is violation of policy conditions, inasmuch as the jeep was being used for commercial purpose.

In reply thereto, the learned counsel for the respondents/applicants argued that a liberal view should be taken. He argued that the insurance company has given Ex.B.1-policy for the passenger carry commercial vehicle and that under Section 147 of the Motor Vehicles Act the applicants are covered. The learned counsel also pointed out

that after a review of the case law, a learned single Judge of this Court held that the insurance company is liable to pay compensation to the extent of 'statutory liability under the Workmen's Compensation Act.' Therefore, his argument is that statutory coverage given under Section 147 of M.V. Act is applicable and that no 'premium' is payable for covering the employee. He relied upon a decision reported in ***P. Venkata Ramana v. Chintaguntla Kumari and others***¹.

This Court after considering the submissions made by both the parties notices that the vehicle was insured as a passenger carrying commercial vehicle only. Therefore, there is no strict prohibition under law for the jeep being used to carry newspapers.

In view of the judgment of the learned single Judge to which nothing contrary has been pointed out and as there is statutory coverage for an employee travelling in a goods carriage under Section 147 of the Motor Vehicles Act, this Court is of the opinion that the Commissioner did not commit any error in awarding the compensation. The liability of the insurance company is statutory in this case and up to the extent of liability provided by the Workmen's Compensation Act. This Court also holds that there is no error warranting interference.

Accordingly, the Civil Miscellaneous Appeal is dismissed. The impugned order dated 25.09.2008 in

¹ 2010 (2) ALD 281

W.C.No.47 of 2005 passed by the Commissioner is confirmed.

In the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 11.06.2018

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