

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

CMA.No. 278 of 2009

J U D G M E N T:

This appeal is filed by the New India Assurance Company Ltd., questioning the order dated 16.10.2006 passed in WC.No.76 of 2004 by the Commissioner of workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar.

The application was filed by the wife and two minor children of one S.Shanthaiah, who was a labourer working with first opposite party, the owner of a tractor-trailer bearing Nos.AP 22U 187 and 188. The said tractor-trailer was insured with appellant-second opposite party. Stating that the Shanthaiah met with a fatal accident while working and in the course of employment on 04.01.2004, the case was filed in the lower Court claiming compensation of Rs.3,00,000/-. The first opposite party filed his counter and admitted that the applicant was working with him as a labourer. However, he denied that the vehicle was driven in a rash manner. He also pleaded that if compensation is awarded, only the second opposite party should be made liable. The second opposite party filed a counter and denied the entire case set up including the accident, age, amount of compensation etc. They also argued that there was a breach of policy conditions and the vehicle was being used for

commercial purpose even though it was insured as an agricultural vehicle.

On behalf of the applicants, AW.1 was examined and she marked Exs.A.1 to A.6. RW.1-the owner of the vehicle also gave evidence. For the second opposite party, RW.2 was examined and he marked EXs.D.1 to D.4. Ultimately, after considering the oral and documentary evidence etc., the lower Court passed the impugned order by which compensation of Rs.2,23,476/- was awarded in all. This order is now assailed in this appeal.

This Court has heard Sri Naresh Byrapaneni, learned counsel for the appellant and Sri N.Ashok Kumar, learned counsel for the respondents.

Learned counsel for the appellant argued with great passion that the vehicle in question was not being used for agricultural purposes and was being used for commercial purposes. He pointed out that a reading of the FIR makes it clear that at that point of time, the trailer was being used to transport sand for the construction of a house and that it was not being used for agricultural purposes at all.

In reply thereto, the learned counsel for the respondents argued that the mere fact that sand was being transported does not lead to a conclusion that the vehicle was being used for commercial purpose. The learned counsel argued that commercial purpose would mean the “systematic usage” of

the vehicle for the purpose of gaining profit. He relies on definitions of the word “commercial” which are to the following effect: “concerned with or engaged in commerce intending to make a profit”. The word “commercial” according to the Oxford Dictionary means “viewed as a matter of profit and loss”. The word “commercial” is defined in the Concise Dictionary as “having profit as a primary aim rather than artistic etc. value”. Therefore, learned counsel argued in the alternative that the mere fact that sand was being transported for the purpose of construction does not lead to a conclusion that the conditions of the policy are not satisfied. He pointed out that there is no effective cross-examination in depth of AW.1 on these issues. He argued that if it is the intention of the respondent to disclaim liability, they should have cross-examined the witness more so RW.2 on the usage of the tractor at that point of time. He also pointed out that RW.1 clearly stated in his chief-examination that on 04.01.2004, the deceased and other labourers went to Appareddipally village for getting sand for construction of a cattle shed for the respondent No.1. This specific averment and affirmation on oath was not rebutted in the cross-examination as per the learned counsel.

Learned counsel also pointed out that lower Court rightly relied upon the judgment reported in ***New India Assurance Company Ltd., Nizamabad v. R.Anantha***

Reddy and others¹ and decreed the claim. Therefore, his argument is that the impugned order does not suffer from infirmity.

This Court, on a review of the entire oral and documentary evidence and the submissions made, notices that RW.1 did state in the FIR that the deceased went to collect sand for his house, but in the charge sheet (Ex.P.2) that is filed which is after the investigation, it is clearly mentioned that the tractor-trailer went to Appareddipally village for bringing sand to the owner of the crime vehicle. The investigation report filed by respondents as Ex.D.1 only mentions that the tractor went to the Appareddipally village to bring sand.

The evidence of RW.1-the owner of the vehicle that the tractor was sent on his own work and for bringing the sand for construction of a cattle shed has not been controverted by clear cross-examination. In **Sarwan Singh v. State of Punjab**² and **Muddasani Venkata Narsaiah (D) Th. Lrs. V. Muddasani Sarojana**³, it was held that if there is a failure to cross-examine on the material parts of evidence, no arguments can be advanced thereto since the failure to cross-examination leads to a conclusion that the appellants have accepted the contents of the chief examination. In the cross-

¹ 2005 (6) ALT 623

² 2003 (1) SCC 240

³ (2016)12 SCC 288

examination, RW.1 very clearly stated that “I am using the tractor for my works only. I sent the deceased for my own work.” Therefore, from a reading of the entire evidence, this Court is of the opinion that only on the basis of the statement in Ex.A.1, it cannot be said that the deceased used the tractor-trailer for his own work. The other evidence leads to the conclusion that the tractor was sent by the owner RW.1 himself for his own work and particularly for bringing sand for a cattle shed.

The other argument that was advanced is that the vehicle was being used commercially. This Court notices the definition of work “commercial”. It always involves an element of profit and a continuous sustained usage of the tractor for transporting sand for sale can lead to a conclusion that it is being used for a commercial purpose. In the case on hand, except for the usage of the tractor on 04.04.2004 for transportation of sand, there is no evidence available to show that the tractor was being used for “commercial” purposes. As noticed earlier, even if the transportation of sand in this case was true it is a one off transaction and not a continuous process. Therefore, this Court is of the opinion that there is no strength in the argument that the vehicle was being used for commercial purposes. The decision relied upon by the lower Court is applicable to the facts and circumstances of the case.

In view of all of the above, this Court is of the opinion that the order passed by the lower Court is a reasoned order passed on a correct appreciation of law. No grounds are made out to interfere with the same.

The appeal is, accordingly, dismissed. No order as to costs.

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

Date: 20.04.2018
KLP



D.V.S.S.SOMAYAJULU,J