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

C.M.A.No.40 of 2009

JUDGMENT:

This appeal is filed against the order dated 17.09.2008 in WC No.49 of 2005 by which the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Kadapa, awarded compensation of Rs.2,78,594/- against opposite parties 1 & 2.

The case of the applicants is that the deceased was working as a cleaner of the lorry bearing No.AP04U 4477 belonging to first opposite party and insured with the second opposite party. On 27.11.2004 the vehicle in question met with an accident and the cleaner died on the spot. At the time of accident, the deceased was working as cleaner of the said lorry under the employment of first opposite party. Therefore, the dependants of the deceased cleaner filed the WC case claiming compensation of Rs.3,00,000/-. For the applicants, AW.1 was examined and Exs.A.1 to A.5 were marked. RW.1 is an officer from the insurance company and the insurance policy was marked as Ex.B.1. After considering the oral and documentary evidence, the Commissioner came to a conclusion that the applicants are entitled to compensation of Rs.2,78,594/-. It is this order that is now impugned and assailed in this appeal by the insurance company.

This Court has heard Sri Naresh Byrapaneni, learned counsel for the appellant/insurance company and Sri D.

Kodandarami Reddy, learned counsel for the respondents/ applicants.

According to the learned counsel for the appellant, the insurance company is not at all liable in this case and he argues that Ex.B.1 policy is issued specifically to cover third party basic, third party property damages and compulsory personal accident coverage only to the owner and driver. Therefore, the learned counsel argued that the driver of the vehicle is not covered by the policy of the insurance and that the insurance company is not liable. He relies upon the cases of a) ***Ramashray Singh v. New India Assurance Co. Ltd. and Ors.***[1]; b) ***The New India Assurance Co. Ltd., rep. by its Branch Manager v. Lodya Shankar and Ors.***[2]; and c) ***Dudekula Salabee v. R. Siva Sankar Reddy and Anr.***[3]. Basing on these three cases, the learned counsel argued that unless and until specific premium is paid for covering the accident to persons like the cleaner, the insurance company is not liable. By pointing out the schedule annexed to the policy, he also argued that only the owner and driver and third parties are covered along with damages to the vehicle but not the 'employees' of first opposite party.

In reply to this, the learned counsel for the respondents/applicants argued that the applicants are covered by Section 147 of the Motor Vehicles Act, 1988 which

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[1] (2003) 10 SCC 664
[2] 2004 (3) ALD 400
[3] 2008 (1) ALD 161

legally prescribes the policy that is necessary to be obtained and also states that a specific policy is not required to cover the compensation payable under the Workmen's Compensation Act in respect of a) an employee engaged in driving the vehicle; b) an employee engaged as a conductor or ticket examiner of the public vehicle; c) an employee being carried in a goods carriage. It is his contention that Section 147 of M.V. Act itself provides the coverage and therefore, there is no need to specifically take a policy to cover these employees nor is there any necessity to pay a separate premium.

The learned counsel for the respondents/applicants also argued that only for coverage of the persons over and above those specified in Section 147 of M.V. Act, a specific policy may be necessary and a seperate premium should be paid. His argument is that the driver; ticket examiner and a person carried in the goods carriage are eligible to receive compensation.

This Court after a review of the submissions notices that the policy in question is issued to a "goods carrying commercial vehicle". The same is visible from a reading of the policy itself. The witness who deposed on behalf of the insurance company clearly admitted that the policy was in force as on the date of the accident. The only point urged is that separate premium was not paid by the owner to cover the employee in question. Even in the cross-examination, he admits that policy is in force.

Therefore, the short and simple point that is argued is about the coverage of the deceased cleaner under Ex.B.1-insurance policy. Admittedly, the deceased in this case is a cleaner of the vehicle in question. Therefore, a plain language reading of Section 147 of M.V. Act makes it clear that his case is covered by the 'Statute' itself and that a separate policy or premium is not required to be paid in case of the deceased cleaner. This Court is of the opinion that the deceased cleaner is covered by the policy in question and therefore, this Court does not find any infirmity in the order passed by the Commissioner for Workmen's Compensation, Kadapa. This Court is of the opinion that the submission of the learned counsel for the respondents/applicants is correct. A cleaner of vehicle is a person who accompanies the driver and assist him. The policy in question is a goods carriage open policy and the vehicle admittedly is a goods vehicle. Therefore, this Court is of the opinion that the policy in question covers the deceased cleaner. A decision reported in ***Senior Divisional Manager, New India Insurance Co., Ltd. v. K. Kiran and Anr.***[4] squarely covers this issue also and the learned single judge of this Court held that there is a statutory coverage for a cleaner up to a limit under Workmen's Compensation Act even if no extra premium is

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[4] 2007 ACJ 1153

paid. Therefore, this Court is of the opinion that the case of the applicants deserves to be succeed.

As no arguments were advanced on the other points like wages, age etc., this Court is also not going into these issues. Although a point relating to the interest is raised, this Court finds that the award of interest is in tune with the provisions of the Workmen's Compensation Act and also the decisions of the Hon'ble Supreme Court of India starting from ***Ved Prakash Garg v. Premi Devi and others***[5] and other subsequent judgments.

The learned counsel for the appellant lastly pointed out that the policy is subject to the Indian Motor Tariff (IMT) conditions and drew the attention of this Court to the policy which stated that the policy is subject to the Rules 7, 21, 20 and 17 of IMT 2002. He also drew the attention of this Court to IMT 17 and argued that the personal accident coverage to the paid drivers, cleaners and conductors can only arise when the additional premium is paid. He therefore argued that unless the additional premium is paid by the drivers, cleaners and conductors, they are not eligible for claiming compensation nor is second opposite party/appellant liable to pay compensation because of the restrictions contained in the policy.

In reply thereto, the learned counsel for the respondents/applicants again argued that under Section 147

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[5] AIR 1997 SC 3854

of M.V. Act for payment of compensation up to the limits specified and as per the Workmen's Compensation, there is no need for payment of premium for the category of employees mentioned in Section 147 of M.V. Act which provides statutory coverage as per the Workmen's Compensation Act. If the owner wanted to pass on a greater benefit and also coverage over and above the provisions of Workmen's Compensation Act, then IMT 17 would apply for which specific preium is payable.

The learned counsel for the respondents/applicants pointed out that as per the Workmen's Compensation Act, for the loss of one eye, the percentage of loss of earning capacity is fixed as 40%, but under IMT 17, the scale of compensation is fixed as 50%. Similarly, he argued that loss of one limb and one eye in IMT 17, the scale of compensation is 100% and the same differs from the schedule 1/2 of the Workmen's Compensation Act. Therefore, his argument is that for payment of compensation unde IMT 17, additional premium is necessary since it allows for claiming of compensation at a rate and for reasons which are different from the schedule etc., as fixed under Workmen's Compensation Act.

The words used in IMT-17 are clear "in consideration of the payment of additional premium it is hereby understood and agreed that the insurer undertakes to pay compensation <u>on the scale provided below</u>" and also <u>whilst mounting or</u>

<u>dismounting from or travelling in the insured vehicle and caused by violent external means</u>.

This argument of the respondents/ applicants is convincing to this Court as compared to the argument advanced by the learned counsel for the appellant. If additional premium is paid, the scale of compensation as fixed under IMT 17 dehors the provisions of Workmen's Compensation Act is payable for certain accidents as specified therein. In the case on hand, the compensation is claimed as per the Workmen's Compensation Act. Therfore, IMT 17 will not really apply.

For all the above reasons, this Court finds that there are no valid grounds made out in the appeal and the same is accordingly dismissed. 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: 13.04.2018
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