

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

CMA.No.810 of 2007

JUDGMENT:

This appeal is filed against order dated 17.08.2007 passed in WC.No.265 of 2005 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda.

The appellant is the insurance company, which is aggrieved by this order. The case before the lower Court was that one Sri P.Ramaniah met with a fatal accident while he was working in the employment of first opposite party on a tractor and trailer No.AP 24-V-3155 and 3156. It is mentioned that on 21.09.2005, the deceased met with a fatal accident when he was travelling on the tractor and trailer for loading and unloading sand. The first opposite party did not file his counter and remained ex-parte. The second opposite party filed a detailed counter denying the entire case.

In the trial, the wife of the deceased was examined as PW.1 and she marked Exs.A.1 to A.5. For the respondent, RW.1 was examined and he marked Exs.B.1 to B.3. After considering the documentary and other evidence, the Commissioner awarded a sum of Rs.2,39,329/-to the applicants and directed both the opposite parties to pay the same. It is this order that is now challenged in this appeal.

The essential grounds that are urged are that the deceased was negligent as he was sitting on the mudguard of the tractor and that as the policy conditions were breached, the insurance company is not liable. It is also urged that the seating capacity of the tractor is one and there was no scope for a person to sit on the tractor. For all these reasons, the learned counsel for the appellant Sri Naresh Byrapaneni, argued that the insurance company is not liable. He also cited ***National Insurance Company Ltd. V. Prembai Patel and others***¹; produced Xerox copy of IMT 39 and 39(a) and argued that in the absence of payment of any special premium, the insurance company is not liable. This was an alternative submission made by the learned counsel apart from his primary submission of negligence and sitting on the mudguard of a tractor.

This Court after examining the facts and circumstances notices that even in ***Prembai Patel***'s case (1 supra), the Supreme Court has stated that a person who is injured has an option of filing an application under the Motor Vehicles Act, 1988 (for short 'the Act') or under the Workmen's Compensation Act. The Supreme Court in paragraph 6 has clearly held that in a petition under the Workmen's Compensation Act, the injured or the legal heirs of the deceased workmen do not have to establish negligence as a

¹ 2005 ACJ 1323

pre-condition for award of compensation. But in a claim petition before the Motor Accidents Claim Tribunal, negligence becomes an issue. The injured or the legal representatives of the deceased have to establish by preponderance of evidence that there was no negligence on the part of the deceased in a motor accident claim. This Court also notices judgment in ***Union of India (UOI) vs. Prabhakaran Vijaya Kumar and Others***², wherein the hon'ble Supreme Court held as follows:

“46. In various social welfare statutes the principle of strict liability has been provided to give insurance to people against death and injuries, irrespective of fault.

47. Thus, Section 3 of the Workmen's Compensation Act 1923 provides for compensation for injuries arising out of and in the course of employment, and this compensation is not for negligence on the part of the employer but is a sort of insurance to workmen against certain risks of accidents.”

In addition, this Court also notices the judgment of the learned single Judge of this Court in ***United India Insurance Company Ltd., Warangal v. Mattedu Manikyam and others***³, wherein the single Judge noticed that a collie was travelling in a tractor and trailer on the mudguard of a tractor. The learned single Judge held that the mere fact that

² 2008 (9) SCC 527

³ 2000 (1) ALD 572

the deceased was travelling on the mudguard of a vehicle does not lead to a conclusion that there is a breach of the policy conditions. Similarly, in case reported in ***P. Venkata Ramana v. Chintaguntla Kumari and others***⁴ another learned single Judge held as follows:

“Neither under the Act, nor the Rules made thereunder, there is any condition to the effect that a person engaged as a worker or a Coolie in a goods vehicle must not travel in it, once the loading or unloading of the goods vehicle is over. It is not uncommon that the Coolies or labourers have to be taken along with the vehicles for unloading, and after that work is over, they be brought to the place, from where they were picked up. In holding that the deceased became a gratuitous passenger, in a goods vehicle after he has unloaded the goods, the Tribunal has virtually read something into the provision, which did not exist.

It is not out of place to mention that in the context of putting a vehicle to use, the Drivers, irrespective of the nature of the vehicle, Conductors in a public service vehicle, and the Coolies or labourers, engaged on a goods carriage are the essential operators, and it is they, who become instrumental in operating the vehicle. In contrast, the third parties come into picture on sheer accident, and the passengers, only to the extent they travel in the vehicle. It is difficult to imagine that

⁴ 2010 (2) ALD 281

the Parliament intended to make it obligatory for the owner of the vehicle to take insurance policy, covering the liability towards third parties and passengers, but not to those, who are essential for putting the vehicle to use.”

Both these cases were under the Workmen's Compensation Act only like the present appeal. As noticed earlier, under the Workmen's Compensation Act, the question of negligence does not arise. In the case on hand, the policy in question was marked as Ex.B.1. The policy clearly shows that seven (7) employees were covered as per the provisions of the Workmen's Compensation Act. The evidence of RW.1, who was examined on behalf of the insurance company is also important. In the cross-examination, he clearly admits that the insurance company collected extra premium towards workmen's compensation. This Court, on an examination of the policy in question clearly holds that seven (7) employees of the insured are covered. The insurance company cannot take shelter under IMT 39 and state that the insurance company is not liable. The seven (7) employees were specifically covered by the policy in question and the policy mentions the same. The burden is on the appellant to show how the deceased workman is not included in the seven (7) employees for whom the insurance cover was obtained. The proposal for the policy in question or the person who issued the policy in the beginning should have been examined to prove who are the seven (7) employees who are actually

covered by respondent No.1 and to prove that the deceased was not covered by the policy. This was a fact pre-eminently in the appellant's knowledge. In the absence of any such positive evidence this Court holds that the appellant is liable to pay compensation. In addition, this Court also notices that under Section 147 of the Motor Vehicles Act, an employee of the insured carried in a goods carriage is statutorily covered under Section 147 of the Motor Vehicles Act to the extent of the coverage under the Workmen's Compensation Act. The applicant is a workman of the insured. The policy in question-Ex.B.1 is also issued for a goods carrying commercial vehicle. There is no dispute about this also.

For all the above reasons, including the settled case law, this Court holds that the order passed by the lower Court is correct and that there are no errors for this Court to interfere.

The appeal is, therefore, dismissed and the order of the lower Court is confirmed. No order as to costs.

D.V.S.S.SOMAYAJULU, J

Date: 06.06.2018

KLP