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

CMA No. 174 of 2009

J U D G M E N T :

This appeal is filed by the Insurance Company against the award of compensation dated 20.03.2003 in WC.No.22 of 2000 by the Commissioner for Workmen's Compensation, Visakhapatnam.

The son of the first applicant died in an accident, which occurred when the deceased was working with the first opposite party on a bulldozer, which is insured with the second opposite party. Stating that the death of the first applicant's son was due to an accident arising out of employment, he filed a case against the first opposite party-owner and second opposite party-Insurer claiming compensation. The matter went to trial and after recording the evidence of AWs.1 and 2 and marking Exs.A-1 to A-4, Exs.B-1 to B-6, the Commissioner passed an order directing payment of Rs.2,19,950/-. It is this order that is assailed in the present appeal.

Heard Sri Naresh Byrapaneni, learned counsel for the appellant. None appeared for the respondents.

Learned counsel for the appellant argued that the deceased was not a driver and that he was not having a requisite licence to drive a bulldozer and that therefore, there is a violation of policy conditions. In addition, he also argued that the accident occurred when the vehicle was in a garage and the deceased was helping the mechanic. Therefore, he argued that the accident did not arise out of the employment of the deceased.

This Court notices that the accident in this case occurred because a big iron plate weighing more than 300 kgs fell on the deceased on 24.07.1999. The available evidence including Ex.A.1-FIR, Ex.A.2-inquest report and Ex.A.3-postmortem report show that the injury and the consequent death occurred as a heavy 300 kgs plate fell on the deceased. The oral evidence of AWs.1 and 2 also corroborates the occurrence of the accident.

The insurance company has examined one Sri Ch.V.Viswanadham as their witness. According to the said witness, the insurance company is not liable as (a) the deceased was not having a valid driving licence at the time of the accident and (b) because he was not working as a driver and was in fact working as a mechanic in the garage. Stating that these are violations of policy conditions, he prays that the claim may be dismissed. In his cross examination, he further admits that he is going to summon the Officials from the Transport Authority with regard to the driving licence of the deceased. He also admits that the confirmation about a valid licence should be given by the Road Transport Authorities. He also admits that he has no personal knowledge about the accident.

This Court, on an examination of the entire evidence, notices the following:

(a) The driving licence of the deceased is not marked as a document either by the appellant or by the respondents.

(b) The appellant company, which took the stand that the deceased did not have a valid driving licence, did not take any steps to prove the same. They did not either summon the records from the Road Transport Authority or file any other record.

(d) The accident occurred when the vehicle was not actually been driven and was in a garage for repairs. The deceased died due to the impact/crush injuries caused because of falling of an iron plate.

In view of these facts, this Court holds in line with the judgment reported in ***Jitendra Kumar vs. Oriental Insurance Co. Ltd. and Anr.***[1] of the Hon'ble Supreme Court of India that the insurance company cannot escape liability on the ground that the deceased did not have a licence. The main purpose test evolved by the Hon'ble Supreme Court of India in the above judgment clearly holds that if the accident was not actually caused due to the driving of the vehicle, the insurance company cannot escape liability. The main purpose test is thus satisfied in this case because the deceased died as a heavy plate fell on his head. The licence or the lack of it does not really matter in this case as the death was for other

[1] 2003 ACJ 1441= AIR 2003 SC 4161

reasons and the driver did not contribute to the same. This was reiterated in the case of ***National Insurance Co., Ltd., v. Swaran Singh and others***[2]**.**

For all these reasons, this Court holds that the appeal is devoid of merits and there are no infirmities in the order impugned. As the learned counsel concentrated on this issue only and did not argue anything else, this judgment is also confined to this issue.

In the result, the appeal is dismissed. 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: 28.02.2018
KLP

[2] 2004 ACJ 1 = AIR 2004 SC 1531