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

CMA.No.542 of 2006

J UD G M E N T:

This appeal is filed by the New India Assurance Company Limited against the order in WC.No.207 of 2004 dated 07.03.2006 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad.

The case was filed by the parents of one Sri B.Sayanna, who died in an accident while working on a jeep bearing No.AP 22U A 8270. The case was filed against the first opposite party-Sri U.Umapathi and the insurance company, which insured the vehicle.

The first opposite party did not appear despite notices and was set *ex parte*. The second opposite party filed a detailed counter denying the case set up by the applicants.

The matter went to trial and on behalf of the applicants, AW.1 was examined and Exs.A.1 to A.3 were marked. For the second opposite party, RW.1 was examined and EXs.R.1 to R.3 were marked.

The learned Commissioner, after considering the oral and documentary evidence etc., awarded compensation to the applicants. It is this order that is now challenged in the present appeal.

This Court has heard Sri Kota Subba Rao, learned counsel for the appellant and Sri G.Narender Reddy, learned counsel for the respondents.

The essential question urged by the learned counsel for the appellant is that the vehicle in question was transferred and that there was no valid transfer of the insurance policy. Therefore, the learned counsel urges that in the absence of contract between the insurance company and the present owner, they cannot be made liable. He relies upon judgment in ***Oriental Insurance Company v. Meena Variyal and others***[1] and argues that the words 'any person' occurring in Section 147 of the Motor Vehicles Act, 1988 is to ensure that a third party is given a right to seek damages from the insurance company. But in case of insurance for specific employees, he argues that separate premium is payable. Learned counsel also relies upon ***Rajamani and others v. Oriental Insurance company Ltd., and others***[2] and argues that when a vehicle is transferred, the insured owner has to give intimation to the insurance company. If no intimation is given, it was held that the insurance company is not liable.

In reply thereto, the learned counsel for the respondents argues that the judgments cited by the appellant more particularly, the last judgment is under the old Motor

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[1] AIR 2007 SC 1609

[2] 1999 ACJ 943

Vehicles Act, 1939 and that the current Motor Vehicles Act, 1988 does not have a similar condition.

The learned counsel relies upon ***Tadi Satyanarayana v. Maddu Malla Rao***[3], ***A.Manickam vs. Raju and others***[4], ***Oriental Insurance Company Ltd., v. S.Babaiah and others***[5], ***National Insurance Company Ltd., v. K.Yadamma and others***[6] and ***Rikhi Ram and another v. Sukhrania and others***[7] and argues that the transfer of the vehicle and the failure to give an intimation does not lead to the conclusion that the insurance lapses. He, therefore, argues that the judgments cited by the applicant are not good law. In addition to these judgments, the judgment reported in ***Mallamma (dead) by legal representatives v. National Insurance Company Ltd., and others***[8] is important. This was a case wherein a leading judgment was delivered by his lordship Sri N.V.Ramana. In that case, the tractor involved, on the date of accident, was registered in the name of Gangadhara, but the employer of the applicant was one Jeeva Rathna Setty. Hence, in the absence of a valid proof that the ownership of the vehicle has been transferred in the name of Jeeva Rathna Setty, the benefits of insurance policy cannot be given to Jeeva Rathna Setty. Therefore, it is specifically

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[3] 2008 ACJ 1779
[4] 2005 (4) LLN 222
[5] 1998 (1) ALD 248
[6] 2005 (3) ALD 643
[7] 2003 (2) ALD 71 (SC)
[8] Manu/SC/0291/2014

argued that the vehicle was insured in the name of Gangadhara, but not in the name of Jeeva Rathna Setty, who was the employer of the deceased. In the facts of this case, the first Court, namely the Commissioner for Workmen's Compensation, held that both the insurance company and the new owner of the vehicle Jeeva Rathna Setty are individually and severally liable to pay the compensation. The high Court, however, excluded the liability of the insurance company and then the matter reached the Hon'ble Supreme Court of India. The three judges were called upon to decide the matter. The Hon'ble Supreme Court of India in para 10 of the order clearly held that once the ownership of the vehicle is admittedly proved to have been transferred to Jeeva Rathna Setty, the existing insurance policy in respect of the same vehicle will also be deemed to have been transferred to the new owner and the policy will not lapse even if the intimation as required under Section 103 of the M.V.Act is not given to the insurer, hence the impugned order passed by the High Court is contrary to law.

In addition, the Hon'ble Supreme Court of India also noticed that Rs.15/- is collected as premium to cover the risk of labourer, who was engaged with the loading and unloading of the vehicle. Therefore, after a review of the law and the evidence, the Hon'ble Supreme Court held in para 15 as follows:

> "we are of the considered view that as on the date of accident, the deceased workman was in the course of employment of Jeeva Rathna Setty in whose name the ownership of the vehicle stood transferred and the said vehicle was covered under a valid insurance policy, the High Court ought not have simply brushed aside the decision of the Commissioner fastening joint liability on the Insurance Company in the light of the deeming provision contained in Section 157(1) of the M.V.Act."

In the current case on hand, this Court notices that the appellant has taken a plea in their counter that in view of the transfer of the vehicle, the policy had lapsed, but in the cross-examination of AW.1, a suggestion was put that he was a "passenger" in the vehicle and not a driver of the vehicle. No specific cross-examination on the point of law urged now has been raised or put up in the cross-examination. Despite a lack of pleading in their evidence, they have come up with a plea that the insurance is in the name of one Omesh and it covers vehicle No.AP 22 D 8938 and not vehicle No.AP 22 U 8270. This witness was cross-examined at length and he admits that ultimately the vehicle bearing No.AP 22 U 8270 and AP 22 D 8938 are the same. Because of change in the use of the vehicle, the new registration number was issued by the RTA, Mahabubnagar. Witness also admits that in addition to the driver, as per the policy, premium is paid for covering one employee. Even the policy Ex.R.1, which is marked during the course of this witness examination, clearly shows that Rs.25/- premium was paid and collected to cover workmen's compensation claim for "one employee". These admissions run contra to the submissions of the learned counsel for the appellant.

Therefore, on a review of the entire case law and the facts of this case, this Court clearly is of the opinion that the appellant did not make out any case for this Court to interfere. The judgment and order passed by the lower Court is correct and valid and in these circumstances, this Court concludes that the appeal has to be dismissed.

Accordingly, the order of the lower Court is confirmed and 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: 23.03.2018
KLP