

HON'BLER JUSTICE D.V.S.S.SOMAYAJULU

CMA.No. 34 of 2007

J U D G M E N T:

This appeal is filed by the New India Assurance Company Limited against the order in WC.No.5 of 2006 dated 02.05.2006 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Hyderabad.

The case of the applicant in brief is that he was employed by the first opposite party as a labourer on his Tractor-Trolley Nos. AP 7G 2971 /2972 on a monthly wage of Rs.3,000/-. On 03.10.2005 at about 6.30 p.m. when he was proceeding in the Tractor-Trolley of the first opposite party to Siddipet, in the course of his employment, the driver of the said vehicle tried to avoid hitting the buffaloes coming in the opposite direction. While doing so, he lost control over his vehicle and it overturned on the road near Burgupally and in the said accident he sustained grievous personal injuries. He was immediately shifted to Susthutha Orthopaedic Hospital, Siddipet, where he underwent medical treatment. The applicant, therefore, claimed Rs.4,00,000/- as compensation.

The first opposite party in his counter admitted that he employed the applicant, as a labourer on his Tractor-Trolley Nos.AP 7G 2971/2971. He also admitted about the

occurrence of the accident narrated by the applicant and the injuries sustained by the applicant. He, however, prayed to direct the second opposite party to indemnify him since the said vehicle was duly insured with the latter and the same was in force on the date of the accident i.e. on 03.10.2005.

The second opposite party in his counter disputed all the averments of the applicant and prayed to dismiss the application.

The applicant was examined as AW.1 and the Doctor, who treated him was examined as AW.2. They marked EXs.A.1 to A.7. The first opposite party did not adduce any evidence. The second opposite party examined one A.Ramakrishna as RW.1 and marked Ex.B.1 insurance policy. AW.2, the Doctor, who treated the applicant, deposed that he was an Assistant Professor (Ortho) in Gandhi Hospital, Secunderabad and a Consultant Surgeon. He treated the applicant and stated that because of the disability, the applicant cannot sit, squat, walk long distance without support and he cannot work as a labourer. The physical disability on Mc.Bride's Scale is 30% but as per him the loss of earning capacity is 100% since the injuries sustained by him are grievous in nature. He deposed that he issued Ex.A.4 disability certificate.

Based on the evidence introduced, the Commission awarded a sum of Rs.3,25,059/- and directed both opposite

parties 1 and 2 to pay the same. It is this order that is now impugned in the appeal.

This Court has heard Sri G.Vasantha Rayudu, learned counsel for the appellant and Sri Kotagiri Sreedhar, learned counsel for the respondents.

The short and simple question that was argued in this case is that the policy does not cover the employee in question and that the insurance company particularly cannot be made liable. This is the sum and substance of the submission of the learned counsel. In addition, he also argued that as another claim was filed by the Driver of the vehicle involved in this accident, his client cannot be penalized twice.

On the other hand, learned counsel for the respondents argued that there is no pleading in the case that the policy does not cover the injured. He pointed out that in the counter the second opposite party has denied the employment, wages, age etc., but they did not take the plea that the policy in question does not cover the injured. He argued that the injured in this case is a workman who is working as a labourer on the Tractor/Trailer that has been insured with the second opposite party. He further submitted that the policy in question, which is marked as an exhibit clearly shows that a sum of Rs.25/- was collected as

premium for “an employee” and that the policy is also issued to a goods carrying commercial vehicle.

It is the argument of the learned counsel for the respondents that the plain language reading of Section 147 of the Motor Vehicles Act, 1988 (for short ‘the Act’) makes it clear that there is no need for a policy to cover an employee engaged in the driving of the vehicle, engaged as a conductor or ticket examiner in a public service vehicle or if it is a goods carriage, if the employee is being taken in the vehicle. The learned counsel pointed out the proviso and argued that his client is covered. In the alternative, his submission was that a specific premium of Rs.25/- was also collected to cover the injury to an employee. Therefore, on both these grounds, he urges that his client is entitled to compensation.

In a related accident in which CMA.No.37 of 2007 was filed, this Court held that the Driver of the vehicle was statutorily covered and that there is no need for a separate policy to be taken to cover the injury to a Driver. In this case, as the policy for question is issued to a goods carrying vehicle, the employee being carried in the vehicle is covered by Section 147 of the Act. This is a statutory cover. In addition, the premium of Rs.25/- was also collected as is visible from the policy itself.

In fact, the learned counsel relies on two judgments of this Court reported in ***New India Assurance Company Ltd.,***

Kadapa v. Pujala Chenchu Nagaiah and others¹, which is a case of a “cleaner” of a lorry and also **P.Venkata Ramana v. Chintaguntla Kumar and others**², wherein a learned single Judge of this high Court again held that there is no prohibition that a person engaged as a coolie or worker cannot travel in a goods vehicle for the purpose of loading and unloading. Compensation was awarded in these cases.

This Court also agrees with the submission made by the learned counsel for the respondents and the case law cited. The injured workman is covered by the policy. Hence, the appellant is liable. Therefore, this Court concludes that there is no error committed by the Court below and the award of compensation is just and correct.

For all these reasons, this Court holds that the impugned order is correct. The appeal is, therefore, 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: 29.03.2018

KLP

¹ 2011 (1) ALD 596

² 2010 (2) ALD 281