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

C.M.A.NO.615 OF 2009

JUDGMENT

This appeal is filed against the order dated 12.2.2009 passed in WC.No.65 of 2007 by the Commissioner for Workmen"s Compensation and Assistant Commissioner of Labour, Kadapa.

The application is filed before the Commissioner for Workmen's Compensation by the parents and brother of one P.Venkataramana who supposed to have died in an accident that occurred on 19.12.2006. OP.No.1 is the owner of the tractor trailer and OP.No.2 is the Insurance Company. On behalf of the applicants, AW.1 was examined and Exs.A1 to A8 were marked. On behalf of OP.No.2, Assistant Manager (Legal) was examined and Ex.B1 Insurance Policy was marked.

Basing on the oral and documentary evidence available, the Commissioner came to a conclusion that compensation is payable along with interest thereon. It is this order that is under challenge by the Insurance Company in the present appeal.

Heard Sri P.Venkatasubbaiah, learned counsel appearing for the appellant.

It is the submission of the learned counsel appearing for the appellant that the lower Court misread and misconstrued Ex.B1 and Ex.A7. Learned counsel also contends that unless and until extra premium is paid, the Insurance Company cannot be held liable to cover the accident that occurred. It is his submission that contract of insurance is a specific contract under which certain types of liabilities can be included or excluded depending upon the choice of the parties. It is his specific case that injured is not covered by the policy and no excess premium is paid. He placed reliance on the judgment reported in the case of ***Dudekula Salabee v/ R.Siva Sankar Reddy and another***[1] and contended that there is no special contract between the deceased and the Insurance Company. Therefore, the learned counsel argued that the Insurance Company should be completely excluded from the liability in this case.

There is no appearance for the respondents.

On an examination of the records, this Court finds that the crux of the matter is on the interpretation of Ex.A.7, copy of the Insurance Policy filed by the respondents-applicants and Ex.B.1, certified copy of the same policy. At page-2, column No.3 next to the words "WC to employee one", the word 'driver' is added in ink and it is signed by somebody. The words added in ink were marked was "Ex.M1" by the Commissioner in the lower Court. Therefore, the gist of the dispute is whether Ex.A7 is correct or whether Ex.B.1 is correct. If Ex.A7 is held to be correct, it covers the injury to any employee since it merely says W.C. to employee only without any restriction. On the other hand, if Ex.B1 is considered to be correct, liability of the insurance company is limited only to the driver and not to any other employee. Therefore, the learned counsel for the appellant argues that the deceased, in this case is, not covered by the policy.

This Court, on examination of the oral evidence, finds that the witness for the appellant-OP.No.2 who was examined admitted that Ex.A.7 is issued by their office. He also admits "there is no

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Ex.M1 in Ex.A7". The witness examined for the insurance company was a legal officer of the company. He has no personal knowledge of the corrections made or the word inserted in ink in Ex.B1. He also admits that as per the provisions of the M.V. Act, premium need not be collected for the driver. It is also important to note that the first witness for the respondents-applicants was examined and on 15.7.2008, he filed copy of the policy (Ex.A7). There was no cross examination about the contents of Ex.A7. It was not suggested to him also that Ex.A7 is not a correct policy. He was not confronted with Ex.B1 either. Therefore, the testimony of AW.1 with regard to Ex.A7 has remained unchallenged. This fact coupled with the admission made by the insurance company that Ex.A7 was issued by their own office and the failure of OP.2 to examine anybody concerned or anybody who has personal knowledge about Ex.M1 leads to a conclusion that the word "driver" in ink was added later. If it is the contention of the insurance company that policy was taken only for the purpose of covering the driver, they could have filed all the documents including the proposals submitted by the insured to show that premium was paid only to cover the driver, and no one else. The Insurance company did not seek to file any such documents in the Court.

Based on the evidence available and facts and circumstances of the case, this Court is of the opinion that Ex.A7 should be treated as correct policy and that Ex.B1 cannot be considered to be correct in view of the addition made in ink. For all these reasons, this Court concurs with the findings of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Kadapa.

As no further issue or fact is argued, this judgment is confined to the short point that is raised and argued.

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

Miscellaneous petitions pending, if any, in this appeal shall stand closed.

D.V.S.S.SOMAYAJULU,J

Date: 14/02/2018

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