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

CMA.No.1150 of 2008

J UD G M E N T:

This appeal is filed by the National Insurance Company against the judgment and order dated 03.08.2007 in WC.No.61 of 2005 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar.

The application in the lower Court was filed by Nampally Narasappa and his two daughters claiming compensation for the death of late Narasamma, who is the wife of Narasappa and mother of the other two applicants. Stating that while she was working as a labourer on the Tractor belonging to first opposite party, she met with a fatal accident on 12.04.2005, the case was filed against the owner of the tractor/first opposite party and the insurance company, who is shown as the second opposite party. Notices were ordered to the opposite parties, but the first opposite party chose to remain *ex parte*. Second opposite party-the insurance company in their counter denied all the allegations made and pleaded that the complaint was not maintainable.

For the applicant, AW.1 was examined and for the second opposite party, one witness (RW.1) was examined.

Exs.A.1 to A.7 were marked for the applicant, while Exs.B.1 and B.2 were marked for the second opposite party. Based on the pleadings and evidence, the Commissioner for Workmen's Compensation awarded a total compensation of Rs.2,40,309/- and held that both opposite parties 1 and 2 are liable to pay the compensation.

Questioning this award of compensation, the insurance company has filed the present appeal.

This Court has heard Sri Naresh Byrapaneni, learned counsel for the appellant and Sri J.Sreenivasa Rao, learned counsel for the respondents.

The essential point that was urged by the learned counsel for the appellant is that the policy-Ex.B.2 only covers the driver and owner and that no labourers, who are carried in the tractor/trailor are insured. Therefore, the argument of the learned counsel for the appellant is that the award passed against the appellant is incorrect.

On the other hand, the learned counsel for the respondents argues that the award was a valid award and as the policy in question is a comprehensive policy, both the opposite parties are liable jointly and severally to pay the compensation.

The learned counsel for the appellant relied upon the judgment of ***National Insurance Company Ltd., v. Prembai***

Patel and others[1], wherein Section 147 of the Motor Vehicles Act, 1988 (for short 'the Act') was discussed in detail. He also relies upon the case of ***Ramashray Sing v. New India Assurance Co., Ltd.***, ***and others***[2], wherein the effect of Section 147 of the Act, was considered.

It is the argument of the learned counsel that under Section 147 of the Act, a policy is required to be taken for all vehicles. However, the proviso to the said section 147 of the Act states no policy is required to pay the compensation under the Workmen's' Compensation Act, 1923 up to the limit prescribed by the Workmen's' Compensation Act in respect of death or fatal injury of a person engaged in (a) driving the vehicle (b) conductor or examiners of ticket in a public service vehicle (c) people carried in a vehicle if the same is a goods carriage. Therefore, the learned counsel argued that only the persons covered by sub-clauses (a), (b) and (c) of proviso (1) of Section 147 (1)(b) of the Act are statutorily covered and for the rest of the people, insurance is a matter of contract. Therefore, the learned counsel submits that for coverage over and above the people covered by sub-clauses (a),(b) and (c) of the Act, separate premium should be paid and there should be an agreement between the insurance company and the insured to cover the said employees/people.

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[1] AIR 2005 SC 2337

[2] 2003 (10) SCC 664

To the same effect, is the judgment of ***Ramashray Sing's*** case(2 supra), wherein the Hon'ble Supreme Court held that a policy shall not be required to cover liability in respect of employees engaged in the driving of the vehicle and as a conductor or ticket examiner of a public service vehicle. The Hon'ble Supreme Court had clearly held in para 10 as follows:

> "If the employee concerned is neither a driver nor conductor nor examiner of tickets, the insured cannot claim that the employee would come under the description of any person or passenger."

Therefore, the submission is that there should be separate payment of premium.

Learned counsel for the respondents relied upon ***New India Assurance Co., Ltd., v. Kurva Nagamma and others***[3] and also argued that even the coolies are covered. In fact, para 20 of the judgment is to the following effect:

> 20. On an analysis of the above statutory provisions, it is apparent that while the M.V. Act protects the interests of the driver of every motor vehicle, the Conductor or Ticket Examiner of a public service vehicle (passenger vehicle) and an employee of a goods carriage vehicle, no such protection is available to any other category of employees or persons unless their risk is covered by payment of premium.

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[3] 2015 (3) ALD 362

The learned single Judge also considered the cases cited by the appellant in this case and came to a conclusion that unless extra premium is paid, all the employees are not covered.

The learned counsel also pointed out that they have raised this plea specifically in para 6 of their counter and that their witness who was examined as RW.1 also clearly deposed that no amount was paid to cover the risk of labourers. He pointed out that there was no cross-examination also on this. The argument of the learned counsel for the respondents that the policy is a comprehensive policy and hence the insurance company is liable. Similar arguments were also raised in the cases before the Hon'ble Supreme Court of India and in fact in the case of ***Prembai Patel*** (1 supra), (a judgment of three Hon'ble Judges of the Supreme Court), it was clearly held that additional premium is payable for coverage.

In view of all of this, this Court holds that the liability cannot be fastened on to the insurance company in this case. No premium is paid for coverage of the deceased. The general insurance is a matter of contract and in the absence of a specific understanding and payment of premium, no liability can be fastened on to the appellant. The appellant, therefore, succeeds. It is made clear that the first opposite party is liable to pay the compensation.

For all the above reasons, the appeal is allowed and it is held that the appellant is not liable to pay compensation. In case any amount is deposited, the appellant is at liberty to take appropriate steps for recovery of the same. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

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D.V.S.S.SOMAYAJULU,J

Date: 23.03.2018
KLP