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

C.M.A.No.31 of 2010

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the Insurance Company questioning the order dated 18.11.2009 in W.C.No.29 of 2006 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-IV, Hyderabad.

2. The case of the applicant before the Commissioner is that the deceased, who is the husband of the applicant, was working as a labourer on the tractor-trailer bearing No.AP23V-6841 belonging to the first opposite party and insured with the second opposite party. Stating that while the deceased was in the course of employment on 15.12.2005 he met with an accident and died, the applicant filed WC case claiming compensation of Rs.3,50,000/-.

The first opposite party filed a counter admitting the accident in the employment. OP-2/insurance company in its counter totally denied the case that is set up by the applicant and also filed an additional counter raising a plea that the vehicle was being used for commercial purpose, although the policy taken was only a 'farmer's package policy'. It was also alleged that the deceased was a passenger on the tractor-trailer and that therefore, OP-2 is not liable to pay the compensation.

After the pleadings were completed, the applicant was examined as AW.1. The driver of the tractor was examined as

AW.2. Exs.A.1 to A.13 were marked. For the opposite parties, Sri S. Raghu, Senior Executive (legal) of the insurance company was examined as RW.1. Sri A. Yadaiah, Administrative Officer, Office of the Deputy Transport Commissioner, Medak at Sangareddy was examined as RW.2. Exs.B.1 to B.3 were marked. For the Commissioner, Exs.C.1 to C.3 were also marked.

After considering the oral and documentary evidence, the Commissioner passed the impugned order awarding compensation of Rs.2,78,310/-. It is this order that is now impugned in the present appeal.

The two essential questions of law that are urged are a) that the vehicle was used for commercial purpose in violation of the terms and conditions of the policy; and b) that the deceased was traveling as a passenger on the tractor when the seating capacity of the tractor is only one.

This Court has heard Sri A. Rama Krishna Reddy, learned counsel for the appellant/insurance company-OP.2, Sri G. Narender Reddy, learned counsel for the 1st respondent /applicant and Sri Palle Sriharinath, learned counsel for the 2nd respondent/OP-1.

The learned counsel for the appellant/insurance company vehemently argued that there is a breach of the terms and conditions of the policy as the vehicle was being used for commercial purpose and the policy in question was given as a farmer's package policy. The learned counsel points out that even in the FIR marked as Ex.A.1, it is mentioned that the tractor and trailer was carrying stones for Maxim Construction Company. The learned counsel points out that there is no dispute about the usage at the time of the accident. He also points out that AW.1 also admits in the chief examination itself that the deceased sat 'on the tractor' and he died due to the accident. The learned counsel also points out that the witness from the Transport Office was summoned and he clearly deposed that the seating capacity of the tractor is zero and that nobody is allowed to sit on the same. According to the learned counsel for the appellant, the evidence clearly shows that there is a violation of the policy conditions and that the Commissioner committed a gross error in awarding the compensation holding the appellant liable.

In response thereto, the learned counsel for the first respondent/workman points out that the coverage of the deceased in this case was a statutory coverage and therefore, the so-called violation of the policy conditions is not very germane. The learned counsel also points out that the vehicle in question is a commercial vehicle and is covered as the commercial vehicle only. As per the exhibits filed by the appellant and the oral evidence including the evidence of the summoned witnesses from the RTA office, it is clear that the vehicle is a commercial vehicle. Therefore, he argues that the award of compensation is correct.

This Court on an examination of the facts and circumstances of the case notices that the appellant/OP-2 has filed a detailed affidavit of an officer and he was examined as RW.1. He filed Ex.B.1 which *ex facie* shows at page No.1 that it is a 'farmer's package', but page No.7 of this document contains the following:

> "Cover 7: Tractors
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> 1) Cover is provided for the **Insured's Tractors** on the same terms as if they were vehicles covered under the **Company's** Standard Commercial Vehicle Package Policy (which is deemed to be incorporated into this **Policy** for the purposes of this Cover only) but the cover provided is:
>
> a) for the **Policy Period** only, and
>
> b) is subject to the same terms, conditions, exclusions and warranties as the Company's Motor Policy in all respects."

This clause expressly shows that even though the policy is called for 'farmer's package', the Company's Standard Commercial Vehicle Package is deemed to be incorporated into the policy. RW.1 also clearly admits in the cross-examination that as per Clause-7 of Ex.B.1, the vehicle is covered by a commercial vehicle package policy. He also admits that the tractor-trailer is a goods carriage vehicle. The learned counsel also points out the further cross-examination of RW.1 wherein it is elicited that the policy issued as per Section 147 of the Motor Vehicles Act, 1988. He also admits that according to Section 147, the insured vehicle can carry goods. The learned counsel points out that further cross-examination of the second witness summoned from the Deputy Commissioner Office by name Yadaiah. This witness clearly admits that the LMV vehicle is in commercial use and that the vehicle can carry goods. He also admits that the tractor and the trailer are both commercial vehicles.

The learned counsel relied upon the judgments reported in i) ***United India Insurance Co., Ltd. v. Mattedu Manikyam***[1] wherein a learned single Judge of this Court has held in similar circumstances that a coolie traveling on the mudguard of a tractor is also entitled to compensation; and ii) ***P. Venkata Ramana v. Chintaguntla Kumari and others***[2] wherein another single Judge of this Court relied upon Section 147 of M.V. Act and held that a person being carried in a goods carriage as a 'labourer' is statutorily covered by the Act. The finding of the learned single Judge in para-11 of the said judgment is reproduced here.

> "11. neither under the Act, nor the Rules made thereunder, there is any condition to the effect that a person engaged as a worker or a Coolie in a goods vehicle must not travel in it, once the loading or unloading of the goods vehicle is over. It is not uncommon that the Coolies or labourers have to be taken along with the vehicles for unloading, and after that work is over, they be brought to the place, from where they were picked up. In holding that the deceased became a gratuitous passenger, in a goods vehicle after he has unloaded the goods, the Tribunal has virtually read something into the provision, which did not exist."

In ***Hanumanagouda v. United India Insurance Co., Ltd.***[3], the Hon'ble Supreme Court held that as gumastha/clerk, who is traveling on a loaded vehicle, was also entitled to compensation. The Supreme Court held that a person in a

[1] 2000 (1) ALD 572
[2] 2010 (2) ALD 281
[3] 2014 (4) SCJ 341

clerical cadre accompanying the goods is entitled to claim compensation for an injury arising out of the accident.

This Court also notices a clear pronouncement of Karnataka High Court reported in ***The Oriental Insurance Company Limited, City Branch, rep.by their Administrative Officer v. Thukarama Adappa***[4] wherein a learned single Judge analyzed the provisions of Section 147 of M.V. Act and came to the following conclusions:

> "20. Therefore, it follows that under Section 147, the following class of persona are covered in the case of death or bodily injury. They are:
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> (1) Third parties.
>
> (2) Owner of the goods or his authorised representative carried in the goods vehicle.
>
> (3) Any passenger of a public service vehicle.
>
> (4) The driver who is employed by the insured who is engaged in driving the vehicle,
>
> (5) An employee employed by the insured of a public service vehicle engaged as conductor of the vehicle or in examining the tickets of the vehicle.
>
> (6) All employees of the insured carried in a goods carriage.
>
> In respect of injured falling under class (1) to (3) the liability of the insurance company is unlimited. In respect of injured falling under class (4) to (6) the liability of the insurance company is <u>restricted to the liability arising under Workmen's Compensation Act. Though in respect of class (1) to (3) referred to above, the premium is to be paid as per the terms of the contract, in respect of class (4) to (6) no premium is liable to be paid</u>. The premium paid while taking the policy covering the risk of class (1) to (3) would be sufficient to cover the risk of class (4) to (6). In other words, the liability to pay compensation in respect of class (1) to (3) arises out of contract and the liability to pay compensation in respect of class (4) to (6) arises statutorily once the aforesaid contract is entered into. Therefore, it follows all persons who fall outside these classes/categories are not covered under the policy. They may be fare paying passengers, gratuitous passengers, employees who do not fall under the aforesaid categories, etc.
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> In Satpal Singh's case, under the Act, the Supreme Court interpreting the word "injury to any person" held, every one injured in the accident is now statutorily covered under the new Act. The liability declared as aforesaid in Satpal Singh's case is now expressly over-ruled as laying down not good law. In Asha Rani's case, Devi Reddy Konda Reddy's case, Ajit Kumar's case

[4] 2007 ACJ 1497

> and Baljit Kaur's case, the Supreme Court has held that the legislative intent was to prohibit goods vehicle from carrying any passenger. Carrying passengers in a goods vehicle is not contemplated under the Act. Though the Act mandates compulsory coverage against death of or bodily injury to any passenger of a public service vehicle and compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle, the liability was limited to liability under the Workmen's Compensation Act, 1923. The legislature never intended to cover the risk of any passenger in goods carriage. The premium paid under the new Act would only cover a third party, any passenger of a public service vehicle as also the owner of the goods or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise. However, once such a policy is taken toy paying the premium, statutorily the employees of the insured such as driver, conductor, ticket collector and who are carried in the goods carriage, are also covered to the extent of the liability under the Workmen's Compensation Act, 1923. The legislature never intended to provide for the liability of the insurer with respect to passengers in a goods carriage, especially gratuitous passengers who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people. Therefore, it was held injury or death to any person has to be confined only to persons who are expressly mentioned in the Section and the risk of all other persons whose name do not find a place in the section are not covered under the policy. Therefore, fare paying passengers, gratuitous passengers or even employees other than conductor and ticket collector in a public service vehicle, passengers in a goods carriage who are not employees of the insured are not covered under the policy.

This is the correct view of law and in view of the above, this Court holds that in this case, which is filed under the provisions of Workmen's Compensation Act, the insurance company is liable for payment of compensation under Workmen's Compensation Act and up to the limit provided under the Workmen's Compensation Act only. A policy is not required to cover the liability in respect of the death of an employee for compensation payable as per the Workmen's Compensation Act. Admittedly, in this case, the deceased was being carried in the vehicle as an employee of the insured. Therefore, this Court holds that the said employee is statutorily covered for the compensation payable as per the provisions of the Workmen's Compensation Act.

For the aforesaid reasons, this Court holds that there are no merits in the appeal and the appeal is bound to fail. The order dated 18.11.2009 in W.C.No.29 of 2006 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-IV, Hyderabad is confirmed. The Civil Miscellaneous Appeal is dismissed. In the circumstances of the case, there shall be 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: 06.06.2018
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