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

CMA.No. 104 of 2009

J UD G M E N T:

This appeal is filed by the United India Insurance Company Ltd., against the judgment and order dated 18.03.2008 in WC.No.1 of 2007 passed by the Commissioner for Workmen's Compensation, Ongole.

The case before the lower Court was filed by the applicants for payment of compensation on account of death of one Sri C.Anjaiah. The deceased was working as a driver on the lorry bearing No.AP 27 T 4299 belonging to the first opposite party and insured with the second opposite party.

The case of the applicants is that the deceased while reversing the lorry found some electric wires hanging across the lorry. With a view to remove them, he tried to move the electric wires with his hand. As the wires were live wires, he sustained a shock and thereafter he expired. Therefore, the application is filed claiming compensation of Rs.5 lakhs. The first opposite party remained *ex parte*. Opposite party No.2 filed a counter denying the entire grounds urged in the application. For the applicants, AWs.1 and 2 were examined and Exs.A.1 to A.5 were marked. No oral evidence was introduced for the respondents.

The Commissioner, after a review of the evidence, documents and statements passed an award directing payment of Rs.4,19,840/-. It is this order that is now assailed in the appeal.

This Court has heard Sri E.Venugopal Reddy, learned counsel for the appellant and Smt. Kavitha Gothipati, learned counsel for the respondents.

The essential grounds that were urged during the course of hearing were to the effect that the deceased had died due to his own negligence by touching a live electric wire and that the policy in question does not cover such a death. It was also argued that as the accident is not a "motor accident", the policy does not cover the same. In addition, they have also urged that the deceased was not having a valid driving license

In reply thereto, the learned counsel for the respondents argued that the documents filed including the FIR, inquest and postmortem report show that the death occurred when the deceased was attending to his duties on the lorry itself. The learned counsel argued that the deceased died while he was in the course of his duty. It is also submitted that the aspect of so called negligence is also not relevant, because the proviso (b) to Section 3 of the Workmen's Compensation Act, 1923 (for short 'the Act') does not apply in case of a death or permanent total disablement of a workman.

This Court finds that there is substantial force in the submission made by the learned counsel for the respondents.

It is an admitted fact that the deceased was at that spot on that fateful day only because of his employment. There is more than a casual connection between his employment and the accident. Even if it can be argued that the negligence of the employee cause the death, in view of the clear language contained in proviso (b) to Section 3 of the Act, if the death occurs even due to an act of the employee, which can be called negligent; still the employer is liable.

In addition, this Court holds that the existence or otherwise of a license is not very material in this case. As the accident occurred due to the deceased coming into contact with a live electric wire, the main purpose test evolved by the Hon'ble Supreme Court of India in ***Jitendra Kumar V. Oriental Insurance Co. Ltd. and Another***[1] and ***National Insurance Co. Ltd. V. Swaran Singh and Others***[2] comes to the aid of the applicants. The accident did not occur due to the act of driving of a vehicle and as such the issue about a driving license is not very relevant in this case as the death was due to electrocution.

Last submission that made is that the 'accident is not a motor accident' and so the appellant is not liable. Learned counsel for the respondents argued that the insurance policy

[1] 2003(6) SCC 420
[2] 2004 (3) SCC 297

in question does not define what is a 'motor accident' nor does it say that the insurance company will be liable only if the accident is caused by the vehicle in question. This Court also agrees with the submissions of the learned counsel for the respondents that the policy in question is meant to cover any accident/claims that can arise under the Act.

It is clear from a reading of the policy that premium of Rs.150/- was collected for covering up to six employees under the Act. Therefore, this Court is of the opinion that the word accident cannot be limited to an accident caused by the motor vehicle in question only. In fact, as rightly pointed out by the learned counsel for the respondents, the Courts in India have held that the notional extension of employment extends even to cases where a person was commuting to his work spot and to cases where an employee left the working place. Therefore, this Court agrees that a restrictive meaning of an accident cannot be given. Accident is a very term which means 'a mishap or untoward event, not expected or designed'.

Therefore, this Court is of the opinion that any accident having a connection or nexus with the employment is covered by policy subject to the restrictions imposed by law or by the policy in question.

For all these reasons, this Court holds that the appellants have not made out any valid grounds to interfere with the order passed by the lower Court.

The appeal is dismissed and the order and judgment of the lower Court are confirmed. 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: 06.04.2018

KLP