HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL MISCELLANEOUS APPEAL No. 780 OF 2008

JUDGMENT:

1. The appellant-Insurance Company preferred this appeal aggrieved by the order and decree dated 27.12.2007 passed in W.C.No.25 of 2004 whereby the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ananthapur directed the appellant and fifth respondent herein to pay jointly and severally the compensation of Rs.2,27,899/- with interest at 12% per annum from the date of filing the claim petition till date of realization besides stamp duty to the respondents herein/applicants.

2. The contention of the appellant/Insurance Company is that the owner of the offending tractor and trailer bearing Nos. AP 02U 2295 & 2095 did not pay extra premium for the coolies traveling on the said vehicle and therefore the appellant is not liable to pay compensation. Further the contention of the appellant is that the tractor and trailer together is to be construed as heavy goods vehicle and that the driver of the said tractor and trailer possessed light motor vehicle driving licence and therefore he was not competent drive the offending tractor and trailer. It is further contended that the order and decree in question granting interest at 12% per annum is against the provisions of the Workmen's Compensation Act.

3. Per contra, the respondents/applicants contended that Ex.B.1 policy covers the risk of coolies and that it is settled law that the tractor and trailer as per Ex.B.1 RC falls under LMV and therefore the driver who possessed LMV driving licence was competent to drive the tractor and trailer. More so, the compensation awarded by the Tribunal with interest at 12% per annum is as per law and that the order of the Commissioner do not suffer from any legal infirmities warranting interference.

4. The claim of respondents 1 to 4/applicants in brief is that they are the dependants of the deceased workman Erukala Adinarayana who was employed as Hamali on the tractor and trailer bearing Nos. AP 02U 2295 & 2095 and that the deceased used to receive wages of Rs.3000/- per month besides daily batta of Rs.50/- . While so, on 28.04.2004 at about 2.00 PM, the deceased Erukala Adinarayana was present on the tractor and trailer as coolie/Hamili. As the driver of the said tractor and trailer drove the same in rash and negligent manner, at high speed near Balaji Nursing Home, Ananthapur, the deceased workman fell down and sustained grievous injuries. Immediately thereafter, he was shifted to Government General Hospital, Ananthapur and from there, he was shifted to Governmental Hospital, Kurnool for better treatment. While undergoing treatment, he succumbed to injuries on 7.5.2004 at about 5.15 AM. The accident took place in the course of and arising out of his employment.

5. The appellant/OP.No.2 being the insurer, Respondent No.5/OP.No.1 being owner of the offending tractor and trailer are jointly and severally liable to pay the compensation.

6. Before the Tribunal, the appellant/OP.No.2 opposed the claim and contended that the owner of the crime vehicle has not paid the premium covering the risk of coolies, more so, the deceased was the gratuitous passenger and hence the Insurance Company is not liable to pay compensation.

It is further contended that the driver was not having valid and subsisting driving licence at the time of accident; on this ground also, the appellant-Insurance Company is not liable to pay compensation.

7. Based on the rival pleadings, the Commissioner framed the following issues for trial:

1. Whether the deceased was a workman as per the provisions of the Workmen's Compensation Act,1923 and he met with the accident arising out of and in the course of his employment resulting in to death.
2. What was the age of the deceased workman at the time of accident.
3. What weree the wages paid to the deceased workman at the time of accident
4. The validity of driving licence and coverage of insurance policy.
5. What is the amount of compensation payable
6. Who are liable to pay compensation.

8. In order to prove respective claims, on behalf of the applicants/respondents 1 to 4 herein, A.W.1 was examined and Exs.A.1 to A.4 were got marked. On behalf of the appellant/insurance Company and Respondent No.5 herein/Owner of the tractor and trailer, R.Ws.1 and 2 were examined and Exs.B.1 To B.3 were got marked.

9. Now the point that arises for determination is,

"Whether the order and decree of the Commissioner suffers from legal infirmities warranting interference ?"

The learned Counsel for the appellant-Insurance Company contended that the driver of the offending tractor and trailer did not possess valid and subsisting driving licence; whereas the respondents/applicants contended that the driver was having LMV driving licence and he was competent to drive the crime tractor and trailer.

10. The evidence of A.W.1 is that she is none other than the wife of the deceased Adinarayana and Respondents 2 and 3/applicants 2 and 3 are their sons and Respondent No.4/Applicant No.4 is her mother-in-law. They are the legal heirs/dependants of late Adinarayana. There is no cross examination of A.W.1 or rebuttal evidence produced by the appellant-Insurance Company or Respondent No.5/owner of the tractor and trailer (Opposite Parties in WC.No.25 of 2004) in regard thereto, to deny the evidence of AW.1.

In the absence of any such rebuttal evidence, I am of the considered opinion that the respondents/applicants are the legal heirs/dependents of the deceased Adinarayana.

11. The evidence of A.W.1 is that her husband Adinarayana worked as Hamali under the fifth respondent/OP.1 on his tractor and trailer bearing Nos. AP 02U 2295 and 2095. The only suggestion to AW.1 by the appellant Insurance Company/OP.2 is that they failed to file any document showing that the deceased Adinarayana was working as Hamali. AW.1 in her chief stated that her husband was coolie, under the employment of Respondent No.5/OP.1 on his tractor and trailer bearing Nos. AP 02U 2295 and 2095.

12. The Senior Assistant, Divisional Office of the appellant Insurance Company/OP.2 was examined as RW.1whose evidence is that the seating capacity of the tractor is only one and hence the deceased was the unauthorized passenger. During the cross examination, he admitted that he has no personal knowledge of the accident. Ex.B.3 is the RC extract of the offending tractor and trailer in which chasis number, class of vehicle etc., are noted. The offending tractor was registered as LMV transport and its unladen weight is noted as 1692 Kgs.

13. Sri Syed Karemulla, Senior Assistant, RTO Office, Ananthapur was examined as R.W.2 whose evidence is that he was dealing with tractor and trailer and that Ex.B.2 is the driving

licence. During the cross examination, he admitted that the tractor and trailer is a LMV and the driver has got licence to drive LMV both transport and non-transport and that as on the date of accident, the tractor and trailer are having valid permit.

14. The Commissioner having considered the material evidence coupled with the evidence of A.W.1 and in the absence of any convincing rebuttal evidence, came to the conclusion that the deceased Adinarayana was a coolie on the tractor and trailer bearing Nos. AP 02U 2295 and 2095 at the time of accident. The same is reflected in Ex.A.1-FIR and Ex.A.2- Inquest report. The said Adinarayana suffered grievous injuries in the course of and arising out of his employment. Absolutely there is no evidence to show that the deceased was a gratuitous passenger and that the driver did not posses valid and effective driving licence as on the date of accident.

15. In *THE NEW INDIA ASSURANCE COMPANY LIMITED Vs. VOIKA MARRUBAI* (2000 ACJ 647) a copy of insurance policy was marked as Ex.B.1 which shows payment of extra premium of Rs.16 to cover the risk for the driver and the cleaner and that no extra premium was, however, paid to cover the risk of other employees such as hamalis etc. In the absence of any such extra premium paid by the owner to cover such risk and in view of the terms and conditions of Ex.B.1 Insurance policy, it was held therein that the appellant Insurance Company can be held liable to pay compensation only to the extent specified under

the Workmen's Compensation Act as per proviso 95 (1)(b)(ii) of the Motor Vehicles Act ,1939. In view of the same, it was therefore held that the Award of the lower Court is to be modified accordingly restricting the liability of the appellant Insurance Company to the amount payable under the Workmen's Compensation Act. In the said case, it was not disputed therein that the amount that will be payable to the claimants under the Workmen's Compensation Act will be Rs.23,000/- in view of the age of the deceased, the nature of his employment and other circumstances. Therefore it was directed therein that the appellant Insurance Company would be liable to pay only an amount of Rs.23,000/- to the claimants.

16. In the other decision in ***DOBELLA LAXMI NARAYANA Vs. S.RAVI KUMAR*** (1995 ACJ 1Q201), the appellant had licence to drive light motor vehicle, and as such, it cannot be said that he was not having a valid driving licence to drive a light vehicle. Finding that there is nothing on record to show that the vehicle in question is a heavy vehicle, this Court has not persuaded to accept the submissions made by the learned Counsel for the Insurance Company. Thereby this Court held that the appellant had valid driving licence to drive the vehicle as on the date of accident and therefore the finding of the Tribunal that the appellant did not possess valid driving licence was set aside.

17. Similarly in the case on hand, as per the own evidence of R.W.1, read with evidence of R.W.2, the tractor and trailer is a Light Motor Vehicle and the driver did possess light motor vehicle driving licence to drive the light motor vehicle-tractor and trailer-bearing Nos. AP 02U 2295 and 2095. As per Ex.B.2 the driver possessed LMV driving licence as on the date of accident and as per Ex.B.3, the unladen weight of tractor and trailer Nos. AP 02U 2295 and 2095 is 1692 Kgs and it is a Light Motor Vehicle.

Further the evidence of AW.1 establish that her husband deceased Adinarayana was under the employment of Respondent No.5 herein/OP.No.1.as on the date of accident and he was a hamali on his tractor and trailer Nos. AP 02U 2295 and 2095. Therefore it is well established that the deceased Adinarayana while undergoing treatment died on 7.5.2004 at about 5.15 AM due to the injuries sustained in the accident occurred on 28.04.2004 at about 2.00 PM due to the rash and negligent driving of the driver of the tractor and trailer bearing Nos. AP 02U 2295 and 2095, to which the Respondent No.5/OP.No.1 was the owner and appellant-Insurance Company/OP.NO.2 was the insurer. Ex.B.1 was the Insurance Policy which was under force as on the date of accident. The accident occurred during the course of and arising out of the employment and the deceased was the 'workman' as defined under the Workmen's Compensation Act.

18. Further Ex.B.1 policy shows that no extra premium was paid covering the insurance of labourers/coolies. But as per Section 147(1) proviso (i) and Sub clause © of the MV Act, the Act policy with statutory coverage of insurance itself covers the risk of employees under the Workmen's Compensation Act and hence there is no need for separate premium for the coolies who come under the Workmen's Compensation Act. In view thereof, the Commissioner held that there is no need to pay extra premium covering the risk of employees and there by held that Ex.B.1 Insurance policy covers the risk of the deceased Adinarayana who was coolie/hamili on the tractor and trailer bearing Nos. AP 02U 2295 and 2095 as on the date of accident.

19. With regard to the income of the deceased, AW.1 deposed that her husband was earning Rs.3000/- per month besides the daily batta of Rs.50/-. Except the oral evidence, no documentary evidence was filed to prove the income and age of the deceased. In the absence of any proof, the Commissioner applying the minimum wages fixed to the Mazdoor/coolie as per the G.O.Ms.No.30, L.E.T & F Department, dated 27.7.2000, computed the monthly wages of the deceased at Rs.2,313/- (Basic Rs.1437/- + VDA.Rs. 875.75 Ps). The Commissioner considering the evidence of AW.1, coupled with Ex.A.2-Inquest report, and Ex.A.3 Postmortem Certificate came to the conclusion that the deceased was aged 35 years and applied the factor 197.6

and assessed accordingly the compensation payable at Rs.2,27,899/-.

20. The Commissioner considered the evidence in proper perspective that the deceased was under the employment of Respondent No.5/OP.No.1 and the accident took place on 28.4.2004 during the course of and arising out of employment as coolie/hamali on the tractor and trailer bearing Nos. AP 02U 2295 and 2095 having driven the same by its driver in rash and negligent manner. By virtue of Ex.B.1 policy, which was in force with effect from 21.01.2004 and 20.1.2005 whereas the accident occurred on 28.4.2004, on which day the policy was in force. The appellant-Insurance Company/OP.No.2 being the insurer and Respondent No.5/OP.1 being the owner of the tractor and trailer bearing Nos. AP 02U 2295 and 2095 are jointly and severally liable to pay the said compensation with interest at 12% per annum from the date of filing the claim application i.e. 29.7.2004 till the date of realization besides the stamp duty of Rs.460/-. The Commissioner further observed that in case they (OP.Nos.1 and 2) failed to deposit the awarded compensation within thirty days from the date of receipt of a copy of order, the employer/Respondent No.5 herein is liable to pay penalty as provided under Section 4(A)(3) of the Workmen's Compensation Act, 1923, but not the insurance company.

21. Having considered the evidence on record, both oral and documentary, and marshalling the facts, the order of the Commissioner does not suffer from any legal infirmities, warranting interference by this Court. Thus the order of the Commissioner is legal and valid.

22. For the foregoing discussion and in the result, the appeal is dismissed with costs, while confirming the order and decree dated 27.12.2007 passed in W.C.No.25 of 2004 by the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ananthapur.

23. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 3rd April, 2018.
Msnrx