HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL MISCELLANEOUS APPEAL No. 909 OF 2008

JUDGMENT:

1. The National Insurance Company Limited aggrieved by the Award dated 30.05.2005 passed in W.C.No.192 of 2004 on the file of Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour-III Circle, Hyderabad preferred this appeal.

2. Brief facts of the case are that on 09.07.2004 the deceased T.Ushamma was working under the control of fifth respondent/OP.1 and at about 3.00 PM after having lunch she boarded the tractor and trailer bearing Nos. AP 22U 7217 and AP 22U 7218 to unload the mud. At that time, as the driver of the said tractor and trailer drove it in rash and negligent manner with high speed, the vehicle bent towards one side, as a result of which the deceased fell on the ground and was crushed under the rare tyre of the trailer. Immediately the deceased was shifted to the Government Civil Hospital, Achampet for treatment and thereat she succumbed to injuries while undergoing treatment.

The fifth respondent/OP.1 under whom she was employed, used to pay Rs.3,000/- per month towards wages and she was aged about 30 years as on the date of accident. The accident arose out of and during the course of her employment with the first respondent and the said tractor and trailer was insured under the policy Ex.A.5/D.2 which was in force as on the date of accident and therefore the appellant-Insurance Company has to indemnify the fifth respondent-owner.

3. The Commissioner for Workmen's Compensation after considering the material on record and submissions of counsel settled the following issues for trial:

1. Whether the deceased worker late Smt. T.Ushamma met with an accident on 9.7.2004 which arose out of and in the course of her employment as a labourer of the 1st opposite party and died while undergoing treatment in the hospital on the same day due to the injuries sustained in the accident ?
2. If yes, who are liable to pay compensation to the applicants?
3. What is the amount of compensation entitled by the applicants ?

4. In order to settle the issues, the Commissioner recorded the evidence of P.W.1, the first applicant and got marked Exs.A.1 to A.6 on their behalf. On behalf of Opposite Party No.1 (fifth respondent herein), the Commissioner recorded the evidence of RW.1 and got marked Exs.D.1 to D.3 on his behalf. No oral or documentary evidence was adduced on behalf of Opposite Party No.2 (appellant herein).

5. The Commissioner on thorough consideration of the evidence on record, held that the first and second Opposite

Parties (appellant and fifth respondent herein) are jointly and severally liable to pay the compensation of Rs.2,40,503/- together with stamp fee of Rs.482/- and Advocate fee of Rs.500/- totalling to Rs.2,41,485/- to the dependants of the deceased workman. Both the Opposite parties were directed to deposit the said total amount by way of a Demand Draft drawn on any Nationalized bank and in favour of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad within 30 days from the date of receipt of the order, failing which the applicants are entitled to interest @ 9% per annum on the amount of compensation from the date of filing the application i.e. 30.10.2004 till the date of realization.

6. Now the point that arose for determination is:

"*Whether the Award passed by the Commissioner awarding compensation of Rs.2,41,485/- suffers from any legal infirmities warranting interference*?"

The contention of the appellant-Insurance Company is that when there was no coverage provided under the policy in respect of the passengers since the vehicle is a goods vehicle, it is not liable to pay compensation. Further contended that no premium was paid towards the workmen and that since the vehicle which is a goods carrying commercial vehicle is not supposed to carry any person including the workmen. Further contended that no premium was collected towards the workmen and therefore the award of the Commissioner making it liable for payment of compensation suffers from legal infirmities warranting interference.

Per contra, respondents 1 to 4/applicants contended that the deceased workman died in the accident arising out of and during the course of her employment and that at the time of accident, the deceased workman was engaged for loading and unloading the mud and therefore the appellant Insurance Company is liable to pay the compensation by virtue of existing insurance policy by indemnifying the fifth respondent (OP.No.1)/owner of the offending tractor and trailer bearing Nos. AP 22U 7217 and AP 22U 7218.

7. There is no dispute that the fifth respondent herein (OP.1) was the owner of the offending tractor-trailer. On 9.7.2004 at about 3.00 PM while the vehicle was in use, it bent towards one side and at that time, the deceased fell down from the tractor-trailer and succumbed to injuries while undergoing treatment in the Government Civil Hospital, Achampet. It is also a fact that the tractor-trailer were insured with the appellant-Insurance Company under Exs.A.5/D.2 policy. It is also a fact that the appellant in the grounds of appeal has not disputed the findings of the Commissioner that the driver of the tractor-trailer drove it with high speed and in rash and negligent manner and caused the accident which resulted death of the deceased T.Ushamma.

8. In the case of ***UNITED INDIA INSURANCE COMPANY LIMITED, KADAPA DISTRICT Vs. KODURU BHAGYAMMA AND OTHERS*** {2008(2) ALD 273 (DB)} this Court held that the expression 'motor vehicle' or 'vehicle' has been defined under Section 2(28) of the Motor Vehicles Act,1988 (for short 'the MV Act'). Similarly, the expressions 'tractor' is defined under Section 2(44) of the MV Act and the 'trailer' is defined under Section 2(46) of the MV Act. As contemplated under Section 2(29) of the MV Act, the motor vehicles are those vehicles which are mechanically propelled and adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source. Under Sub-section (44) of Section 2 of the Act, tractor is defined as a motor vehicle which is not itself constructed to carry any load. Tractor is a special type of motor vehicle which cannot by itself carry any load, but all the same it is a motor vehicle. Sub-section (46) of Section 2 of the Act defines trailer as a vehicle which is intended to be drawn by a motor vehicle. So if Sub-sections (28), (44) and (46) of Section 2 of the Act are read together, it becomes clear that a trailer is not a motor vehicle, but becomes part of a motor vehicle when it is drawn by a motor vehicle because Sub-section (28) of Section 2 of the Act makes a special reference to a trailer and trailer cannot be moved on roads except by a propulsion transmitted thereto from a motor vehicle.

Therefore, a trailer attached to a motor vehicle is a part of the motor vehicle itself.

In the instant case, the contention of the learned Counsel for the appellant is that as on the date of accident on 9.7.2004 the deceased T.Ushamma was present on the tractor-trailer as workman engaged by the fifth respondent/OP.1 and at about 3.00 PM after having lunch, she along with other labourers boarded the tractor-trailer to unload the mud. At that point of time, the accident occurred and deceased fell down from the tractor-trailer and was crushed under the rear side tyre of the trailer, due to which, she succumbed to injuries in the hospital. It is also not in dispute that the tractor-trailer are insured with the appellant-Insurance Company under Ex.A.5/D.2 Insurance policy which was in force from 24.11.2003 to 23.11.2004 whereas the accident occurred on 9.7.2004, by which date the policy was in force. The death of the deceased T.Ushamma was due to falling from the tractor-trailer at the relevant time of accident arising out of and during the course of her employment. In the decision discussed supra, it was held that under the MV Act no separate insurance is contemplated for a trailer and when the trailer is attached to the tractor which is insured, trailer becomes the part of the tractor. Thus the decision in ***KODURU BHAGYAMMA*** (supra) squarely covers the case on hand. If sub sections (28),(44) and (46) of Section 2 of the MV Act read together, it becomes clear that a trailer itself is not a motor vehicle, but becomes part of a motor vehicle when it is drawn by a motor vehicle, i.e. tractor, because sub Section (28) of Section 2 of the MV Act makes a special reference to a trailer and trailer cannot be moved on roads except by a propulsion transmitted thereto from a motor vehicle; therefore a trailer attached to a motor vehicle (tractor) is a part of the motor vehicle (tractor) itself and the insurance policy Ex.A.5/D.2. taken for the tractor covers the trailer.

9. In the case of ***NEW INDIA ASSURANCE COMPANY LIMITED, NIZAMABAD Vs. R.ANANTHA REDDY AND OTHERS*** {2005 (6) ALT 623} this Court held that Section 3 of the Workmen's Compensation Act (for short 'WC Act') lays down that if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II of the WC Act. Section 167 of the MV Act lays down that notwithstanding anything contained in the WC Act where the death of, or bodily injury to, any person gives rise to a claim for compensation under the MV Act and also under the WC Act, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. Ex.A.5/D.2 covers only driver and third party property. Premium was paid only for third party property and also owner/driver. It is the contention of the appellant that

under Ex.A.5/D.2-goods carrying commercial vehicle (open) policy 'B' package, no premium was paid covering the rescue of labourers/workers. It is settled law that in the absence of any evidence let in by the Insurance Company that additional premium as required has not been paid, it is not open for them to contend that they need not satisfy the award passed by the Commissioner. Once policy covers the driver, cleaner and six labourers, the insurer is liable to pay compensation so awarded. In the absence of any substantial question of law arising in view of proviso to Section 30 of the WC Act and in the absence of any pleading and evidence let in by the Insurance Company before the Commissioner that the premium is collected only for the driver and same does not cover the risk of labourers, the Insurance Company is debarred to question the compensation so awarded. Further it is held therein that maintaining cattle shed is only an ancillary to agricultural purpose and once the tractor-trailer is used by the insured for transporting gravel to the cattle shed, it is nothing but an agricultural purpose. In the case on hand, the tractor-trailer is a goods carrying commercial vehicle covered by Ex.A.5/D.1 policy of B package and the labourers/workers are used to be engaged for loading and unloading the goods.

10. The fifth respondent herein/ (OP.1) was examined as R.W.1. He clearly deposed that the deceased T.Ushamma was working on his tractor-trailer as a labourer since three months

prior to her death and she was paid Rs.3000/- per month towards her wages. As on the date of accident, the deceased and other labourers were proceeding on the tractor-trailer to unload the mud and by virtue of the policy under Ex.A.5/D.2 which was in force as on the date of accident, the Insurance Company is liable.

11. The Insurance Company, which is appellant herein, having received the notice on 8.12.2004 from the Commissioner and another notice issued by the counsel for the applicants informing the date of hearing claim petition, neither it entered the witness box nor pleaded nor adduced rebuttal evidence that the trailer was not covered under the policy Ex.A.5/D.2 and that no premium is paid covering the risk of labourers. Therefore by applying the decision in the case of *R. ANANTHA REDDY* (supra) it can be held that it is not open for the appellant-Insurance Company to say that they need not satisfy the award passed by the Commissioner. Since the policy under Ex.A.5/D.2 covers the risk of driver, owner and it is a B package policy, and in the absence of pleadings and evidence that the policy does not cover the risk of labourers and the premium is collected only for the driver and owner, the Insurance Company is debarred to question the compensation so awarded by the Commissioner.

12. In the case of ***NATIONAL INSURANCE COMPANY LIMITED Vs. PREMBAI PATEL AND OTHERS*** {2005 ACJ 1323}

the Apex Court held that Section 146(1) of the MV Act provides that no person shall use, except as a passenger or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other persons, as the case may be, a policy of insurance complying with the requirements of Chapter XI. Clause (b) of sub-section (1) of Section 147 provides that a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against liability which may be incurred by him in respect of death of or bodily injury to any person or passenger or damage to any property of a third party caused by or arising out of the use of the vehicle in public place. Section 149 of the MV Act imposes a duty upon the insurer to satisfy judgments and awards against persons insured in respect of third party risks. The expression '*such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy)*' occurring in sub-section (1) of Section 149 is important. It clearly shows that any such liability, which is mandatorily required to be covered by a policy under clause (b) of Section 147(1) has to be satisfied by the Insurance Company. The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso

(i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen's Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy.

13. In the case of *JAMPARAPU JEEVAMMA **AND** OTHERS Vs. SANAPALLI VEERA REDDY AND ANOTHER* {2008 (1) ALT 723} this Court held that once it is shown that as on the date of the accident, the policy issued in respect of the vehicle was in force, the insurer would be liable to cover the risk as per the terms and conditions of the policy. The grounds available for the insurance company to defend the action are mentioned in Section 149(2) of the MV Act. Unless it is shown that there has been violation of the breach of specified conditions of the policy as enumerated in the said provision, the insurer cannot seek exoneration from its liability. Unless the insurer is able to establish that there has been violation of breach of any of the terms and conditions of the policy and that too it was conscious violation on the part of the owner of the vehicle, the question of

escaping from the liability under the policy does not arise. In the instant case, as per the evidence of AW.1, the accident occurred on 9.7.2004 at about 3.00 PM while the deceased Ushamma along with other co-labourers was on their regular work of loading and unloading the mud. The appellant has only filed counter before the Commissioner and did not contest the matter. It filed the present appeal aggrieved by the Award passed by the Commissioner. In the grounds of appeal, there is neither plea nor material evidence showing that the policy does not cover the risk of the workmen. There is no such plea or evidence that the fifth respondent/OP.No.1 insured violated the terms and conditions of policy under Ex.A.5/D.2. In the absence of any such plea or evidence showing that there is breach or violation of the specific conditions of the policy as enumerated in the provisio under Section 149(2) of MV Act, the insurer cannot seek exoneration from its liability. Once it is shown that as on the date of accident, the policy issued in respect of the vehicle was in force, the insurer would be liable to pay the compensation as awarded.

14. The evidence of AW.1 corroborated by the evidence of AW.2, owner of the offending tractor-trailer and supported by the documentary evidence at Ex.A.1 certified copy of FIR, Ex.A.2 copy of charge sheet, Ex.A.3- copy of inquest report and Ex.A.4 PME report well established that the deceased T.Ushamma along with other co-workers was engaged by the fifth respondent/OP.1

as labourer for the purpose of loading and unloading mud on the tractor-trailer bearing Nos. AP 22U 7217 and AP 22U 7218 as on the date of accident. As on the date of accident, the deceased was travelling along with other co workers for unloading the mud in the aforesaid capacity and due to the accident arising out of and during the course of employment, she fell down from the tractor and succumbed to injuries while undergoing treatment. The risk of the deceased is duly covered by Ex.A.5/D.2 policy 'B' package. The Commissioner for Workmen's Compensation did not record the finding that the deceased was an unauthorized passenger on the goods carrying commercial vehicle-tractor & trailer and no additional premium was paid covering the risk of the workers. Therefore the Commissioner for Workmen's Compensation came to the conclusion that the deceased was present on the offending tractor-trailer as labourer/worker engaged by the fifth respondent/OP.1 for loading and unloading the mud and that as on the date of accident, she was proceeding on the said tractor-trailer along with other co workers for unloading the mud and in the accident arising out of and during the course of her employment, she succumbed to injuries. The said tractor/trailer was insured under Exs.A.5/D.2 policy, which was in force as on the date of accident as stated supra. In view of the same, the insurer is liable to indemnify the fifth respondent/OP.1/owner of the tractor and trailer to pay the compensation awarded by the Commissioner for Workmen's Compensation.

15. In view of the foregoing discussion, I am of the considered view that the Commissioner for Workmen's Compensation well considered the oral and documentary evidence on record and came to the right conclusion that the offending tractor and trailer having been driven in rash and negligent manner, at high speed by its driver on 9.7.2004, the deceased T.Ushamma suffered injuries in the accident arose out of and in the course of her employment and succumbed to injuries while undergoing the treatment. The said tractor-trailer was insured with the appellant-Insurance company under Exs.A.5/D.2 and the same was in force as on the date of the accident. The appellant-Insurance company neither took any plea nor adduced evidence to establish that there has been violation of the terms and conditions of the policy Exs.A.5/D.2 as enumerated under Section 149 (2) of the MV Act. Thus once it is shown that as on the date of accident, the policy issued in respect of the vehicle was in force, the insurer would be liable to cover the risk. Unless the insurer is able to establish that there has been violation of breach of any of the terms and conditions of the policy, the question of escaping from the liability under the policy does not arise. In view of the same, the appellant-Insurance Company is liable to indemnify the liability of the fifth respondent/OP,1/owner of the offending tractor-trailer by satisfying the award passed by the Commissioner for Workmen's Compensation Act.

16. For the foregoing discussion, I do not see any legal infirmities in the award of the Commissioner for Workmen's Compensation, warranting interference in this appeal.

17. In the result, the appeal merits no consideration and is dismissed accordingly while confirming the Award dated 30.05.2005 passed in W.C.No.192 of 2004 on the file of Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour-III Circle, Hyderabad.

18. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence. No order as to costs.

JUSTICE N. BALAYOGI

DATED 5th November, 2018.
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