

THE HON'BLE SRI JUSTICE N.BALAYOGI

C.M.A. No.646 of 2008

JUDGMENT:

The Insurance Company, aggrieved by the orders of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda in W.C.No.31 of 2005 dated 12.04.2007 awarding compensation of Rs.3,49,865/- with subsequent interest at 9% per annum, jointly and severally against the appellant and the 1st respondent herein (owner of the lorry), preferred this appeal on the grounds that the Commissioner erroneously decided the deceased as "Workman" in the absence of driving license to the deceased against the settled principles of law and contrary to the oral and documentary evidence. Further in the absence of valid driving license, there was no employer and employee relationship between the 1st respondent and the deceased and therefore, the appellant-insurance company is not liable to pay the compensation.

2. Per contra, the contention of the applicants-respondents 2 to 5 herein is that the deceased Md.Jahangir was working as driver on the lorry bearing No.AP 24U 7612 belonged to first respondent herein. While he was on duty as driver of the lorry, on 1.5.2003, while proceeding from Mahaboobnagar to Piduguralla, when the lorry reached Veerapuram village, it hit against a tree, as a result, the deceased received injuries and died on the spot.

3. Heard the learned counsel for the appellant and counsel for the respondents 2 to 5. The appeal was already dismissed for

default as against 1st respondent. Perused the material available on record.

4. To substantiate the claim of the applicants-respondents 2 to 5 herein, the applicant No.1, who is the wife of the deceased examined herself as P.W.1 and marked Exs.A.1 to A.5. On behalf of appellant, no oral evidence was adduced but Exs.B.1 to B.4 were marked.

5. The clinching evidence of P.W.1 is that the deceased was working under the 1st respondent as driver on his lorry bearing No.AP 24U 7612. During the course of employment, while driving the lorry on 1.5.2003 he met with an accident and died on the spot. In the cross-examination, P.W.1 denied the suggestion that her husband was not on duty as driver of the lorry of the 1st respondent at the time of accident. She clearly stated that her husband was 36 years old at the time of accident.

6. To substantiate her claim that the deceased possessed a valid driving licence, P.W.1 filed Ex.A.4-original driving licence of the deceased. Though the appellant herein did not adduce any oral evidence filed Exs.B.1 to B.4. According to Ex.B.1-driving licence verification certificate, the deceased possessed transport driving licence upto 19.1.2001. The deceased was also authorised to drive only light motor vehicles and transport vehicles, but not heavy goods vehicles. Further there is no endorsement under Ex.B.1 about the renewal of driving licence from 22.1.2001 to 19.1.2004. But, as seen from the original driving licence of deceased marked as Ex.A.4, the deceased possessed heavy goods vehicle transport driving licence with effect from 14.8.1991. Absolutely, there is no

rebuttal evidence produced by the appellant herein to the evidence of P.W.1 and Ex.A.4, except Ex.B.1, which only contains endorsement about renewal of driving licence. The subsequent endorsement found on Ex.A.4 is not there in Ex.B.1. Therefore, the Commissioner considering Ex.A.4 rightly came to the conclusion that the deceased possessed valid driving licence, which allowed him to drive heavy goods vehicles and it was renewed up to 19.1.2004 and accordingly, rejected the contention of the appellant that the deceased was not holding a valid driving licence.

7. Regarding the wages of deceased, the evidence of P.W.1 is that the deceased was earning an amount of Rs.4,000/- per month. To rebut the same, the appellant herein did not produce either oral or documentary evidence. Relying on the evidence of Ex.A.4 and P.W.1, the Commissioner took into consideration the minimum wages fixed by the Government of Andhra Pradesh for the Heavy Vehicle Driver employed in Public Motor Transport Undertakings and accordingly fixed the wages of the deceased as Rs.3,595/- per month. Regarding the age of the deceased, P.W.1 deposed that the deceased was aged about 36 years at the time of accident and in Ex.A3-post mortem examination report also the age of the deceased was mentioned as 36 years. The Commissioner taking into consideration the above said evidence, fixed the age of the deceased as 36 years at the time of accident. Since the evidence brought on record established that the death of the deceased was occurred during the course of employment, the Commissioner held that the claimants are entitled to receive the compensation.

8. Considering the age of the deceased as 36 years and having fixed the wages at 3,595/- per month, the Commissioner decided the age factor as 194.64 and computing 50% of wages X Age Factor, fixed the compensation at Rs.3,49,865/- (Rs.3,595 x 50/100 x 194.64). Considering Ex.A.5 and Ex.B.4, copy of insurance policy, which was in force as on the date of accident, the Commissioner held that the 1st respondent being the owner and the appellant herein being the insurer are liable to pay compensation to the applicants-respondents 2 to 5 herein jointly and severally. Accordingly, the Commissioner awarded a total compensation of Rs.3,49,865/- towards compensation and directed the appellant and 1st respondent herein jointly and severally to deposit the said amount by way of demand draft drawn in favour of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda within 30 days from the date of receipt of the order with subsequent interest at 9% per annum from the date of filing of the application.

9. In view of the facts and circumstances discussed above, I am of the considered view that the Commissioner having considered the oral and documentary evidence rightly came to the conclusion that at the time of accident, there was employer and employee relationship between the 1st respondent and the deceased and that the deceased died during the course of employment while driving the lorry.

10. Taking into consideration Ex.A.3-post mortem examination report and the evidence of P.W.1, the Commissioner rightly fixed the age of the deceased as 36 years and arrived the age factor at 194.64

and adopting the wages at Rs.3,595/- per month, which is the minimum wages fixed for the heavy vehicle driver employed in public motor transport arrived at just compensation of Rs.3,49,865/-, which do not suffer from any illegality or infirmity warranting interference by this Court.

11. In the result, the C.M.A. is dismissed with costs while confirming the compensation granted by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda in W.C.No.31 of 2005 dated 12.04.2007 and awarding compensation of Rs.3,49,865/- with subsequent interest at 9% per annum, jointly and severally against the appellant and the 1st respondent herein. The appellant and the 1st respondent are directed jointly and severally to deposit the compensation amount of Rs.3,49,865/- towards compensation, if not already deposited, by way of Demand Draft drawn in favour of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda within 30 days from the date of receipt of copy of this order.

12. Advocate fee is fixed at Rs.2,000/-.

13. Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

20th March 2018
Tsr

JUSTICE N.BALAYOGI