

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

CMA No. 664 of 2006

JUDGMENT :

This is an appeal filed against the order dated 07.03.2006 in WC.No.23 of 2005 passed by the Commissioner of Workmen's Compensation and Assistant Commissioner of Labour-IV, Hyderabad.

The brief averments of the case are that:

The applicants are the wife and children of one K.Redya, who was employed by the first opposite party as Driver of the lorry bearing number AP 11 W 2332 on payment of monthly wages of Rs.4,500/- and Rs.75/- towards daily batta. On 23.03.2005, while he was on duty with a load of sand at a quarry, at about 12:30 hours (night), he stopped the lorry at Yadgarpally village to take rest and while he was sleeping on the sand load lorry, accidentally fell from the lorry and sustained grievous head injury, which resulted in death of the deceased. Since the accident occurred in the course of employment, they filed the application against opposite parties 1 and 2, who are owner of the lorry and the insurer of the lorry respectively claiming compensation of Rs.4,50,000/- for the death of the deceased. The first opposite party remained *ex parte* and the second opposite party filed a

counter denying the accident and what all is stated in the claim petition.

The first applicant was examined as AW.1 and Exs.A.1 to A.12 were marked. On behalf of the second opposite party, Ex.B.1-Insurance policy was marked. After considering the documentary and oral evidence, the Commissioner for Workmen's Compensation passed the impugned order, wherein he directed payment of compensation of Rs.3,54,823/- by both the opposite parties 1 and 2 jointly and severally. It is this order that is now impugned in the present appeal.

I have heard Sri I.Maamu Vani, learned counsel for the appellants and Sri C.H.Indrasena Reddy, learned counsel for the respondents.

It is essentially contested by the learned counsel for the appellants that the deceased was not actually driving the vehicle or nor was the vehicle in motion at the relevant time. It is a case of death that occurred when the deceased fell off a stationary lorry on which he was sleeping. The second essential point urged in the appeal is that the deceased did not have a valid driving licence and that therefore he was disqualified from driving the vehicle. The learned counsel for the appellants, therefore, argued that the injuries in this case are not injuries arising out of and in the course of employment. Alternatively, it was submitted that the

deceased is not entitled to drive the vehicle as he did not have a valid driving licence and that therefore the Insurance Company, which is the appellant, is exonerated from liability.

In reply to this, the learned counsel for the respondents argued that the deceased was resting in the lorry and the lorry was parked only because the Driver/deceased had to rest. According to the learned counsel, the deceased would not have been present at that spot, unless he was employed as a Driver. Therefore, by virtue of his employment, he was present on that spot after driving the vehicle and according to the learned counsel, this is an injury arising in the course of employment. As far as the issue of driving licence is concerned, the learned counsel for the respondents submitted the following judgments:

United India Insurance Company Ltd., v. Annakutty and Another¹, Oriental Insurance Co., Ltd., v. Jimmy and another², New India Assurance Co., Ltd., v. Rubia Rasoolsab Desai and another³ and the decision of the Hon'ble Supreme Court of India in ***National Insurance Co., Ltd., v. Swaran Singh and others⁴***.

It is the submission of the learned counsel based upon these decisions that as the vehicle was stationary, the question of a valid driving licence existing or not is not really material. He relies only upon ***Rubia Rasoolsab Desai's*** case

¹ 2005 (3) LLJ 824

² 2004 ACJ 900

³ 2001 ACJ 748

⁴ 2004 ACJ 1

(3 supra), wherein a single Judge of Karnataka High Court held that when the Tractor was stationary, the question of whether it is a light motor vehicle or heavy vehicle and licence of the Driver is existing or not is immaterial. Similarly, a Division Bench of Kerala High Court in **Annakutty 's** case (1 supra) held that the absence of a driving licence cannot be taken as a reason to deny the compensation in a case like this where the accident resulted in a death of an employee. More important is the judgment of the Hon'ble Supreme Court of India in **National Insurance Company v. Swaran Singh and others**⁵, which is a judgment of three judges. This case analyzed the issue about driving licence or the lack of a driving licence. In a summary of findings, which are reported at para 96 onwards, the Honorable Supreme Court came to a conclusion and particularly at para 102 (vi) as follows:

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act.

The Hon'ble Supreme Court also relied upon judgment reported in **Jitendra Kumar v. Oriental Insurance Co.,**

⁵ 2004 ACJ 1

Ltd.,⁶ wherein the Hon'ble Supreme Court also relied on the doctrine of main purpose and a fundamental breach and came to a conclusion that in cases where the death was not related to a fundamental breach, the rule of main purpose should be pressed into service and the Insurance Company is bound to pay the compensation.

In this case, as noticed from the facts, the deceased drove the lorry, parked the same and went to sleep on the lorry. The injury that occurred was due to his fall from the loaded lorry when the vehicle was stationary. Therefore, this Court also (in line with the judgments of the Hon'ble Supreme Court) holds that the existence or the expiry of the driving licence is not very material since the accident was not caused due to any fundamental breach by the deceased.

In view of this and as the other issues like age, salary of the deceased etc., are not really in dispute, this Court holds that the order of the lower Court is correct and it does not suffer from any infirmities.

For these reasons, the appeal is dismissed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 24.01.2018
KLP

⁶ 2003 ACJ 1441