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

CMA No. 676 of 2009

J U D G M E N T :

This appeal is filed by the insurance company against the order dated 18.12.2006 in WC.No.38 of 2004 passed by the Commissioner for Workmen's Compensation, Ongole.

The case of the applicant before the lower Court was that one Sri G.Ram Babu is the son of the applicant. The third respondent is the mother of the deceased. The first opposite party is the owner of the bus bearing No.AP27V 2277. The second opposite party is the insurer of the said vehicle. Stating that the deceased was working as a cleaner on the bus and that the deceased sustained a fatal injury on 13.07.2004, the application was filed claiming compensation of Rs.2.50,000/-. The application was resisted by the respondents. The first respondent denied the allegations. The second respondent also denied the allegations and argued that the policy is only for the owner, driver and that the cleaner is not covered under the policy. The third respondent claimed compensation for herself. On behalf of the applicant he himself was examined as AW.1. AW.2 was an eye witness to the accident and he has deposed about the accident. On behalf of the respondents, one Sri Prasad Rao was examined as RW.1. RW.2 was a person appointed as an investigator into the accident and RW.3 is Mrs.Padmavathi, who claimed that the deceased was her son and therefore, she is entitled to the compensation.

After an enquiry, the impugned order was passed by which a sum of Rs.2,61,808/- was directed to be paid to the applicant and the third respondent, who are the parents of the deceased. It is this order that is impugned in the appeal.

Heard Sri Naresh Byrapaneni, learned counsel for the appellant and Sri K.Ananda Rao, learned counsel for the respondents.

Learned counsel for the appellant argued that there is no employer/employee relationship and that the policy in question covers the owner and driver only and does not cover the cleaner. He relied strongly on the counter filed by the first opposite party to contend that there is no employer/employee relationship and drew the attention of this Court that the first opposite party clearly said that deceased never worked with him.

In reply thereto, the counsel for the respondents argued that the order in question is a reasoned and well thought out order based on the evidence and the same should be upheld.

As far as the cause of the accident is concerned, it is borne out from the record that the deceased came into contact with a live electric wire when he tried to remove the same and when he was on top of the bus in question in the town of Ongole. Ex.A.1-FIR, the inquest report, which is marked as Ex.A.2 is to the same effect. The postmortem report, which is marked as Ex.A.3 also clearly states that the death was due to electrocution. The FIR and inquest report clearly reveal that the deceased was on top of the bus. If he was a passenger and not in any way connected with the bus, he would not have been on the top of the bus at the time the accident had occurred. Therefore, this Court is of the opinion that the deceased was working as a cleaner in the bus. Even the respondents have filed the attested copies of the FIR, inquest report and postmortem report and the closure report (CD part.1). These documents also show that the deceased was working as a cleaner on that fateful day.

Therefore, this Court has no hesitation to hold that the deceased was working on the board of the bus at the time the accident occurred. Thus, the employer-employee relationship is adequately proved in this case.

The other point that is strongly urged by the learned counsel was that the policy does not cover the employee in question. However, a reading of the policy, which is marked as Ex.A.4 and also Ex.R.1 clearly shows that specific premium of Rs.50/- was collected to cover two employees. For the compulsory coverage to owner-driver Rs.100/- collected, towards workmen's compensation to two employees, a sum of Rs.50/- was collected. The Schedule to the policy clearly shows the same. Therefore, this Court has no hesitation to hold that the policy covers the deceased.

The witness examined as RW.1 clearly states that the policy was in force on the date of the accident. The witness also admits that the copies of the FIR, inquest report etc., are in his possession and that these documents show the deceased was a cleaner. He also admits that the policy covers two employees. The other witness, who was examined as RW.2 for the second respondent is one Sri T.Nageswara Rao, who was appointed as an investigator. According to his report, the deceased was not an employee. This Court is of the opinion that a private investigator's report cannot be used to supersede the documents like FIR, inquest report etc. These documents were also in the custody of the insurance company/appellant. But they did not file any evidence to contradict the contents of these documents and in fact they themselves have filed the documents.

Therefore, this Court is of the opinion that the policy in force covers the employee. He was an employee of the first opposite party. For the death of the employee, the compensation is payable and the lower Court rightly held that the compensation is payable as per the terms of the policy.

For all the above reasons, this Court finds that there are no merits in the appeal. The arguments were confined only to the points that are covered by this judgment. No other issues were raised or argued. Hence, the judgment is also confined to the same.

In the result, the order of the lower Court is confirmed and the appeal is dismissed. 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: 01.03.2018
KLP