

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

CMA.No. 31 of 2007

J U D G M E N T:

This appeal is filed by the National Insurance Company Ltd., against the judgment and order dated 07.09.2006 passed in WC.No.44 of 2004 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Hyderabad.

The case in the lower Court was filed by two applicants claiming compensation for the death of their son Sri T.Srinivas. Their case was that Sri T.Srinivas was working as a Driver of **Auto** bearing No.AP 09W 9646 belonging to the first opposite party and insured with the second opposite party. On the intervening night of 22/23.01.2004, the deceased was driving the Auto. When the tire got punctured, he parked the Auto and was going to bring a mechanic to change the tire, when a car driven in a rash and negligent manner; hit the deceased resulting in severe injuries which lead to his death. On this basis, the case was filed.

The first opposite party in his counter admitted that the deceased was working with him; that he was paid Rs.3,000/- per month and that the accident occurred as described in the case. He, however, contended that in view of the insurance, it is only the second opposite party that is to pay the

compensation. The second opposite party denied the entire case.

The matter went to trial and for the applicants AW.1 was examined and Exs.A.1 to A.11 were marked. For the opposite parties, no oral evidence was introduced, but a copy of the insurance policy was marked as DW.1. Based on the evidence, the Commissioner passed an order directing payment of compensation with interest and costs by both the opposite parties. This order is now assailed in this appeal.

This Court has heard Smt. Jonna Ramani, learned counsel for the appellant and Sri G.Narender Reddy, learned counsel for the respondents.

As can be seen from the grounds of appeal and the substantial questions of law that were raised, the essential grounds are that the accident did not occur as stated and that the deceased did not have a valid driving licence.

The learned counsel for the appellant argued that in the absence of proof of the deceased holding a valid driving licence, no liability can be fastened on to the insurance company. Her second submission is that the accident occurred after the vehicle was parked and the deceased was walking towards a puncture shop as per averments in the application and therefore, the learned counsel argued that the accident did not occur out of and in the course of employment.

In reply thereto, learned counsel for the respondents argued that the existence of a licence is not very material and argued that the respondents failed to introduce oral evidence at all. He also pointed out that the policy is valid on the date of the accident. The last submission of the learned counsel for the respondents is that if the respondents were of the opinion that the deceased did not have valid licence, they should have produced evidence to this effect. Their failure to produce any evidence disentitles them to argue this point as per the learned counsel.

This Court is also of the opinion that the respondents, who have urged that the deceased did not have a valid essential licence, had a duty cast upon them to introduce evidence. They have failed to do so. In addition, considering the manner in which the accident has occurred, it is clear that the existence of a licence is not very material. The main purpose test that has been evolved by the Hon'ble Supreme Court of India in *Jitendra Kumar v. Oriental Insurance Co. Ltd. and Another*¹ followed by *National Insurance Co., Ltd., v. Swaran Singh and others*², is clear and if the Driver did not in any way cause the accident, the existence of a licence is not very material.

The learned counsel for the respondents also relied upon *P.Narasimha Reddy and others v. K.Ramachander*

¹ 2003 ACJ 1441= AIR 2003 SC 4161

² 2004 ACJ 1 = AIR 2004 SC 1531

and another³, wherein a learned single Judge of this Court held that the necessity to deal with the question of an employer/employee relationship arises when the employer denies the same. In this case, as in **P.Narasimha Reddy's** case (3 supra), the first opposite party admitted to the relationship. To a similar effect is the judgment reported in **National Insurance Company Ltd., v. Rajala Lakshmi (died) and others**⁴. In this case also, it was clearly held that it is for the insurance company to prove that the deceased had no valid licence. The learned single Judge also relied upon **Swaran Singh's** case (2 supra) and held that in a given case, if the Driver of the vehicle did not have any hand in the accident, the existence of a licence is not a very material factor.

The last judgment relied upon by the learned counsel for the respondents is the judgment of this Court in **United India Insurance Company Ltd., v. Sri Mohd.Rasheed Ahmed (died) and others** (CMA.No.720 of 2005). In this case also, the learned single Judge held that it is for the insurance company to prove that the deceased did not have a valid licence and relying upon **United India Insurance Company Ltd., v. Noora**⁵, the learned single Judge held that for payment of compensation under the Workmen's

³ 2004 (4) ALD 15

⁴ 2009 ACJ 2458

⁵ 2007 Accident Claims Journal 64

Compensation Act, existence of a valid licence is not a pre-condition.

This Court on an examination of all the material including the case law cited across the bar has come to a conclusion that the appellant's have failed to substantiate the grounds that are urged in the appeal.

In the absence of any evidence from their side that the deceased did not have a valid driving licence, this Court cannot agree with the contentions urged by the appellant. Even otherwise, in view of the clear and categorical pronouncements of Hon'ble Supreme Court of India on the subject, the accident in this case happened when the deceased was going to a mechanic shop to call the mechanic. Therefore, the existence of valid driving licence is not a very material factor in this case.

For all these reasons, this Court holds that there are no merits in the appeal and the same is accordingly 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: 06.04.2018

KLP