

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

CIVIL MISCELLANEOUS APPEAL No. 857 of 2007

ORDER:

This appeal has been filed by the appellant-opposite party No.2 against the Order dated 23.01.2007 passed in WC No.16 of 2005 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour –IV, Hyderabad.

2. The brief facts of the case are that the applicants 1 to 3 are wife and children of the deceased- M.Gopal, who died in an accident that occurred during the course of his employment and that they filed WC No.16 of 2005 against the 1st and 2nd opposite parties. In the claim application, it is stated that on 17.03.2005 the deceased along with other two labourers proceeded from Julur to Dandu Mailaram and that at about 7.30 p.m. while they reached the outskirts of Dandu Mailaram with a load of paddy straw, the driver of the tractor drove in a rash and negligent manner at high speed and lost control of the vehicle, as a result of which, the tractor and trailer turned turtle due to which the deceased - Gopal sustained fatal injuries and died on the spot. Two other labourers were grievously injured and a case in Crime No.56 of 2005 under Section 304-A and 337 IPC was registered and that at the time of the accident, the deceased was aged about 25 years and was earning a monthly salary of Rs.3500/- and they claimed an amount of Rs.4,50,000/- towards compensation to be paid jointly and severally by both the opposite parties being owner and insurer of the vehicle.

3. On behalf of the applicants, the wife of the deceased was examined as A.W.1 and Exs.A1 to A7 were marked. On behalf of the insurance company, RW-1 was examined and Ex.B1-Policy was marked.

4. The Commissioner after framing issues and considering the evidence available on record, awarded an amount of Rs.2,51,670/- together with stamp fee of Rs.503/- and Advocate fee of Rs.500/- in total an amount of Rs.2,52,673/- to the applicants, who are dependents of the deceased, payable by both the 1st and 2nd opposite parties. Being aggrieved by the impugned Order, the present appeal is filed by the Insurance company.

5. Heard Sri N.Mohan Krishna, learned Standing Counsel appearing for appellant-Insurance Company and Sri V.Atchuta Ram, learned counsel for respondents-Applicants.

6. The learned counsel for appellant-insurance company would contend that a sum of Rs.25/- was collected from the owner of the vehicle towards premium under Ex-B1-Policy and it covers the risk of the driver alone as the insured paid premium to cover the risk of only one employee-driver and that the deceased who allegedly worked as labourer/ helper is not covered by the policy in question and that therefore, the insurance company is not entitled to pay compensation to the applicants.

7. On the other hand, the learned counsel for the respondents-applicants submitted that premium was collected for one employee as evidenced in the policy - "WC to employee one - Rs.25/-" and that there is no description or limitation that the policy is issued to cover the driver only. He argued that the Commissioner while considering the fact that the accident occurred during the course of employment and that the insurance company is bound to indemnify the insured and the deceased employee's a labourer, rightly fixed the liability to pay the compensation on the claimants.

8. Now the point for consideration is whether the Ex-B1 policy covers the risk coverage to the deceased or not ?

9. This court perused the material available on record.

10. This Court examined the conditions of the policy-Ex-B1 and the evidence of the witnesses adduced on behalf of the respondents together with the submissions made by the learned counsel for the respondents RW-1 clearly admitted that as per Ex-B1-Policy; Rs.25/- was collected covering the risk of one employee under Workmen Compensation Act, but there is no mention about category of the employee. The Policy does not limit the liability to a driver only. In the light of this clear and categorical evidence coupled with Ex-B1-Policy, this Court has no hesitation to hold that the deceased was covered by Ex-B1-Policy in question. In addition, the Commissioner went into the ambit and scope of Section 147 of the Motor Vehicles Act and held that any employee being carried in any goods carriage vehicle is covered under Section 147 of the Motor Vehicles Act and following the Judgment of a Single Judge of this Court in CMA No.1183 of 2005, held that separate premium need not be paid to cover the risk of the labourer.

11. Having regard to the facts and circumstances of the case and after perusal of the material brought on record, this court is of the view that there is no dispute that the policy in question covers one person and that therefore, the deceased labourer is entitled to the compensation. This court finds no reasons to interfere with the order passed by the Commissioner as the compensation so awarded, is just and reasonable. Hence, this court is of the view that the appeal preferred by the Insurance-company does not have any merits and is liable to be dismissed.

12. In the result, the Civil Miscellaneous Appeal is dismissed confirming the order passed in passed in WC No.16 of 2005 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour – IV, Hyderabad. No order as to costs.

D.V.S.S.SOMAYAJULU, J

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19.02.2018

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