

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

C.M.A.No.794 of 2007

JUDGMENT:

This appeal is filed by the insurance company against the order dated 02.03.2007 passed in W.C.No.111 of 2004 by the Commissioner for Workmen's Compensation and Asst. Commissioner of Labour, Nalgonda.

The case of the applicants before the Commissioner is that the deceased was working as a labourer in the Tipper bearing No.AP16-X-2583 belonging to first opposite party and insured with second opposite party. Stating that on 16.03.2004 the deceased met with a fatal accident in the course of employment, the application was filed claiming compensation of Rs.3,50,000/-.

The first opposite party did not appear before the Commissioner and was set *ex parte*. The second opposite party filed a counter denying the entire case. For the applicants, the husband of the deceased was examined as PW.1 and Exs.A.1 to A.6 were marked. For the second opposite party, RW.1 was examined and Exs.B.1 to B.3 were marked. After considering the oral and documentary evidence, the Commissioner came to a conclusion that the accident occurred out of and in the course of employment and awarded compensation of Rs.1,91,340/-. It is this order that is assailed in the appeal.

This Court has heard Sri P. Bhanu Prakash, learned counsel for the appellant/insurance company and Sri M. Rajamalla Reddy, learned counsel for the respondents/applicants.

The essential question on which the learned counsel for the appellant/insurance company argued is that the deceased was traveling in the tipper in question as a passenger and that the insurance company is not liable to pay the compensation. It is also argued that the vehicle was insured for the purpose of unloading and loading only. The submission of the learned counsel for the insurance company is that if an accident occurred when the goods were actually being loaded or unloaded, the insurance company is liable but in this case the accident occurred when the vehicle is in transit. The learned counsel urged that the application was wrongly allowed by the Commissioner.

In reply thereto, the learned counsel for the respondents/applicants pointed out that the policy was in force on the date of the accident and that Ex.B.1 policy specifically covers accidents and injuries to nine employees. The learned counsel pointed out that specific premium of Rs.225/- was collected as can be seen from the policy schedule for workmen's compensation coverage. Therefore, he urged that opposite parties 1 & 2 are jointly and severally liable.

It is clear from a reading of the case that the policy in question is a goods carrying commercial open policy. It clearly was taken to cover the WC case claim up to 'nine employees'. Specific premium was Rs.225/- was taken for the coverage of nine employees. Therefore, this Court holds that the policy in question covers the employees. The other point urged is that the policy is valid only for loading and unloading and that it covers accidents that occur only during the loading and unloading. This Court did not notice such a pre-condition in Ex.B.1 policy (which is also marked as Ex.A.6). Even otherwise, this Court holds that for the purpose of unloading and loading, the vehicle has to travel with the employees on the road. If the contention of the learned counsel for the appellant is accepted, then there will not be any coverage for the persons carried on both the vehicle for the purpose of loading and unloading till reaching the point of loading and unloading. Such a stipulation is contrary to law. The employee in question sustained the fatal injuries only because he was in the course of employment and was traveling in the vehicle as an employee. Therefore, this Court holds that the argument advanced in the alternative that the policy covers only accidents occurring at the time of loading and unloading is not correct.

For all the above reasons, this Court holds that there are no merits in the appeal and the same is accordingly dismissed. In the circumstances of the case, there shall be

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
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