HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL MISCELLANEOUS APPEAL No.1149 of 2008

JUDGEMENT:

The appellant - Oriental Insurance Company Limited, aggrieved by the Order dated:31-12-2003 in W.C. Case No.137 of 2001 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, (for short, the Commissioner) preferred this Appeal.

2. This Civil Miscellaneous Appeal was dismissed for default vide Court order dated:20-12-2007 in respect of respondent No.1-Owner of lorry.

3. The contention of the appellant is that, the policy issued is act policy and does not cover the risk of insured in respect of labourers and further the claimant suffered only simple injuries and to establish the same, ought to have permitted the appellant Company to adduce its medical evidence and the Commissioner committed serious error in dismissing I.A.No.81 of 2003 by order dated:17-10-2003 and the finding of the Commissioner that the claimant suffered disability of 45% is vitiated and cannot form the basis for working out any compensation.

4. It is the further contention of the appellant that the Commissioner overlooked the fact that FIR and charge sheet relied on

by the very claimant establishing that the injuries suffered are only minor and the injuries are not coupled by any disability and thus, no compensation is contemplated under the Workmen's Compensation Act and that the W.C.No.137 of 2001 is liable to be dismissed only on this count.

5. The claim of the respondent /applicant-labourer on tipper lorry bearing No.AP25 T 8811 is that on 28.6.2000 at 8.00pm while the respondent No.1/applicant was traveling on tipper lorry from Armoor to Nizamabad side, when the said lorry reached near Mamidipalli village shivar, driver of the lorry drove in rash and negligent manner and gave dash to lorry bearing No.AP25 T 6661 coming from Nizamabad to Armoor side and also dashed against a parked lorry bearing No.AP37 T 1212. As a result of the accident, the claimant sustained grievous fracture to right leg both bones, fracture to left wrist lower end of radius, laceration to forehead and multiple and grievous injuries on various parts of the body. The respondent /applicant was earning an amount of Rs.3,000/- per month as salary from opposite party No.1 and contributing the same to his family members. He was 20 years as on the date of accident and therefore, respondent Nos.1 and 2 are liable to pay compensation.

6. The respondent No.1-owner of Lorry Tipper filed counter admitting that the claimant is working as labourer under the control on

her lorry No.AP 25 T 8811 and he was paid Rs.3,000/- per month towards salary.

7. Appellant/Respondent No.1 filed written statement denying the averments of the claim petition and contended that the claimant was 30 years and discharging his duties as labourer under the employment of respondent No.1-owner of lorry No.AP 25 T 8811. It was further denied that because of the accident, claimant/applicant has become permanently disabled and unable to discharge his duties.

It is further denied in written statement that as per the complaint and FIR, cleaner of the lorry bearing No.AP.37.T.1212 only received injuries and none others. That claimant/applicant has not received any injuries much less the fracture and grievous injuries as narrated in the petition and further there is no master and servant relation between claimant/applicant and respondent-owner of the lorry.

The appellant/respondent further denied in written statement that claimant/appellant is authorized labourer of the respondent-owner of lorry tipper and the alleged accident occurred due to rash and negligent driving of the driver. So, this respondent is not liable for any compensation. In case, any compensation is awarded against the respondent, this respondent is entitled to recover the same.

8. After hearing and having considered the pleadings and rival contentions of the parties, the Commissioner framed the following issues:

> 1. Whether the applicant is a workman within the meaning of the Act and whether the accident occurred during the course of employment under Opposite Party No.1?
>
> 2. If so, to what relief the applicant is entitled and against which of the Opposite Parties?

That, on behalf of respondent/applicant, applicant himself- Jandla Kistaiah and Dr. T. Narsing Rao, were examined as PW-1 and PW-2 respectively and Exs.A1 to A6 were marked. On behalf of respondents, Branch Manager, Oriental Insurance Limited, Nizamabad, was examined as RW.1 and Insurance Policy is marked as Ex.B3 and further on behalf of respondent-owner of tipper lorry, Xerox copies of registration certificate and permit are filed which are marked as Ex.B1 and Ex.B2.

9. Now, the point that arises for determination is:

> *Whether the order of the Commissioner suffers from any legal infirmity warranting inference in this Appeal?*

10. The contention of the appellant is that FIR and charge sheet show that the claimant sustained only minor injuries and there is no permanent disability. Therefore, the Commissioner erred in assessing

disability of 45% believing the evidence of PW2 without allowing the appellant-Company to adduce any evidence.

11. It is pertinent to note that the claimant himself was examined as PW.1, besides examining Dr. T. Narsing Rao as PW.2. The consistent evidence of PW.1 is that on 28.6.2000, he along with other labourers were traveling on the instructions of lorry owner to load and unload sand on the lorry bearing No.AP 25 T 8811 as labourers from Armoor to Nizamabad side. PW.1 was cross-examined at length. In the cross-examination, PW1 stated that he was proceeding from Armoor to Nizamabad with a load of sand from Donkol in the said lorry. Police recorded his statement on the day of accident. He denied the suggestion that he has not stated before the police that he was working under respondent No.1-owner of lorry tipper and further denied the suggestion that he was not working as labourer under respondent No.1 and in collusion with police managed to write his name in Ex.A2 ie., charge sheet.

12. A perusal of the Ex.A1 go to suggest that the complaint was presented by Ajmeera Kishan who is the owner of lorry No.AP.37.T.1212 wherein he clearly stated that both left tyres of lorry punctured and after changing tyres at about 8.00pm, the accused B. Pundalik while coming from Armoor side, drove lorry bearing No.AP.25.T.8811 in a rash and negligent manner and dashed against the lorry bearing No.AP.25.T.6661 which was proceeding towards

Armoor from Nizamabad and thereafter, crime vehicle grazed past, hit against the lorry No.AP.37.T.1212 on its back side, cleaner who is a person in his lorry was injured and requested to take action against driver of the lorry No.AP.25.T.8811. Ex.A2 is the charge sheet which reveals that Ajmeera Kishan is the complainant and Babbilwad Pundalik is the driver of the Tipper lorry bearing No.AP.25.T.8811 was an accused. The Sub-Inspector of Police, Maklur police station, after thorough investigation, filed a charge sheet against driver of Tipper lorry No.AP.25.T.8811 finding that when the lorry bearing No.AP.25.T.8811 reached outskirts of Mamidipalli, on national highway-16 road and at about 8.00pm, the accused while coming from Armoor side, drove the lorry bearing No.AP.25.T.8811 in a rash and negligent manner and dashed against the lorry bearing No.AP.25.T.6611 which was proceeding towards Armoor from Nizamabad, thereafter crime vehicle grazed past, hit against the lorry bearing No.AP.37.T.1212. On account of which, cleaner of this lorry and five others sustained injuries. In the said charge sheet, it is clearly mentioned that the age of J. Kistaiah-PW.1 is about 30 years, labour on lorry No.AP.25.T.8811 is injured and eye witness to the accident.

Further, though the respondent No.2/appellant denied that PW.1 is the labourer on the lorry No.AP.25.T.8811 employed under respondent-owner of the lorry, he did not choose to file any oral and documentary evidence. It only examined branch manager of the appellant Sri D.V.S. Ram Prasad-RW.1 whose evidence is that it does not speak in support of his contention that there is no employer and employee relationship between the claimant and respondent No.1-ower of lorry. His entire evidence is that Ex.B3 is only act policy, no premium covering labourers is paid. Hence, it does not cover the risk of labourers. But during the cross examination, admitted that as per their policy, there is liability to pay compensation to the labourers. More over, respondent No.1-owner of the lorry No.AP.25.T.8811 admitted that claimant-J. Kistaiah is only employed as labourer on her lorry on the date of accident and is loading and unloading sand.

13. In such circumstances, I am of the considered view that the Commissioner after elaborate discussion of the evidence of PW.1 and RW.1 and also Exs.A1 and A2 came to right conclusion that though the Counsel for opposite party No.2 denied accident and relationship of employer and employee between opposite party No.1 and the applicant, no contradicting material is placed in this regard basing on which I can disbelieve the applicant's evidence and come to a different conclusion. Further, on perusal of applicant's evidence and the documents filed by the applicant, it revealed that the applicant was employed by opposite party No.1 as labourer and that he suffered permanent partial disability in an accident arising out of and during the course of employment under opposite party No.1.

14. The further contention of the appellant is that the policy does not cover the risk of labourers as no premium was paid to that effect.

There is evidence of RW.1 wherein his clear evidence is that as per the policy under Ex.B3, the risk of driver and cleaner is covered and no premium was collected covering risk of labourers and he has no knowledge of Exs.B1 and B2.

15. A perusal of Ex.B1 go to suggest that register number of the vehicle is noted as GJ11 T 8731 and on the top of Ex.B1 and also Ex.B2 form PPC, register number of the vehicle is GJ11 T 8731 was changed to AP25 T 8811. During the course of cross-examination, RW.1 admitted that as per Ex.B1, R.C as on 31-3-2000, the RTA, Nizamabad has reassigned the RC No. GJ11 T 8731 to AP25 T 8811. So, Exs.B1 and B2 supported with the admission of RW1 go to suggest that registered owner is Smt. Rama Devi W/o Sri E.Muthyam Reddy and originally it was registered with number GJ11 T 8731 on 31-3-2000 and reassigned the number as AP25 T 8811.

That, there is a suggestion to RW.1 that the amount of Rs.2,779-00 includes the risk coverage of labourers. In Ex.B3, the amount of Rs. 30 additional premium was paid–"legal liability for paid Drivers/Workmen No.2. ADD." Further, against Limitations column under Ex.B3 policy noted as "use only under a public carrier permit within the meaning of Motor Vehicle Act, 1988. The policy does not cover use for Organized racing. Speed testing."

16. In the case of the **New India Assurance Company Limited Represented by its Branch Manager Vs. Pujala Chenchu Nagaiah**[1], held as under:

> “That the contention of the Appellant, that it is not under obligation to cover the liability arising out of the death or bodily injuries to a cleaner, unless extra premium is paid; cannot be accepted. By virtue of section 30 of Workmen’s Compensation Act, 1923, this Court having considered the proviso under section 147 of the Motor Vehicle Act, came to conclusion that Section 146(1) of the Act provides that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be. Clause (b) of Sub-section (1) of Section 147 provides that a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2) against any liability which may be incurred by him in respect of death of, or bodily injury to any person or passenger or damage to any property of a third party caused by or arising out of the use of the vehicle in public place. Sub-clauses (i) and (ii) of Clause (b) are comprehensive in the sense that they cover both 'any person' or 'passenger'. An employee of owner of the vehicle like a driver or a conductor may also come within the purview of the words 'any person' occurring in Sub-clause (i). However, the proviso (i) to Clause (b) of Sub-section (1) of Section 147 says that a policy shall not be required to cover liability in respect of death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Act if the employee is such as described in Sub-clauses (a) or (b) or (c). The effect of this proviso is that if an insurance policy covers the liability under the Workmen's Act in respect of death of or bodily injury to any such employee as is described in Sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b), it will be a valid policy and would comply with the requirements of Chapter XI of the Act.
>
> In the earlier judgments, rendered by this Court, referred to above, it was proceeded on the assumption that the proviso to Section 147(1) of the M.V. Act would relieve the owners of vehicle from the obligation to take out a policy, to cover the

---

[1] 2011 (1) ALD 596

> risk towards drivers, conductors or other employees, and it is left to their discretion to take out such policy, by paying extra premium. The importance of the phrase "other than a liability arising under the Workmen's Compensation Act" was not appreciated. The observations made by the Hon'ble Supreme Court in PREMBAI PATELI'S case (4 supra), would put at rest, the doubt, that may exist in this context. Recently, this Court in National Insurance Co. Limited v. D. Sivasankar MANU/AP/0324/2006 : 2006 (4) ALD 398, explained the purport of Sub-section (1) of Section 147 of the M.V. Act.
>
> The proviso indicates that the policy is to per se, cover the liability towards the employees referred to in proviso (i) (a), (b) and (c), i.e., Driver of the vehicle, the Conductor of a public transport vehicle or any other employee in a goods vehicle. The coverage for any employees other than those, referred to above, is optional and cannot be treated as a requirement under the M.V. Act. The liability arising under the W.C. Act, in respect of death or bodily injury towards a Driver is statutory and mandatory and any basic policy would cover it. The insurer would not be under obligation to pay any extra premium to cover the liability towards the Driver of the vehicle."

In the instant case, as per the evidence of PW.1 admitted by RW.1, the claimant was under the employment of respondent No.1-D. Rama Devi (owner of tipper lorry) and the PW.1 along with other labourers were travelling as labourers on the instructions of respondent No.1 to load and unload sand in the lorry bearing No.AP 25 T 8811 and travelling from Armoor to Nizamabad side. Admittedly, he is a labourer and there is an employer and employee relationship. He met with an accident during the course of employment. The policy under Ex.B3 indicates additional premium of Rs.30 was paid towards drivers/workmen No.2. It is not mandatory on the part of the insured to pay extra premium to cover liability towards labourer. Therefore, the contention of the appellant that it is not under the obligation to cover liability arising out of the accident causing bodily injuries to the claimant unless extra premium is paid cannot be accepted. Admittedly, lorry tipper AP25 T 8811 was proceeding with sand load and claimant was engaged by respondent No.1-D. Rama Devi-Owner of the tipper lorry as labourer for load and unload sand. Therefore, is covered under section 147 (1) of the M.V. Act. That no exclusion can be taken to the order passed by the Commissioner holding that the appellant and the respondent – D. Rama Devi-Owner of the tipper lorry are jointly and severally liable to pay compensation. No serious infirmity is pointed out as to the quantum of compensation.

17. The Commissioner, having considered the evidence of doctor T. Narsing Rao examined as PW.2 who is consultant Orthopaedic Surgeon, Khaleelwadi, Nizamabad, who deposed that on 28-8-2002, he examined PW.1, who came to his private clinic to obtain disability certificate. The said doctor examined physically and clinically by taking X-ray and found Malunited fracture of both knees of right leg and malunited fracture lower end of radius. He assessed disability of 65% permanent partial disability and issued Ex.A4 in his private capacity. The percentage of functional disability and loss of earning capacity is 65% to 70%. PW.2 also verified Ex.A3 wound certificate which shows (1) fracture of both knees of right leg, (2) fracture to left wrist lower end of radius and (3) laceration to forehead. The 1 and 2 are grievous injuries and 3 is simple injury. Ex.A4 is the disability certificate issued by PW.2, assessing disability of 65%. PW.2

confronted both Ex.A3 and Ex.A4 during the cross examination. The Commissioner, having considered the evidence of PW.1 and medical evidence of PW.2 supported by Ex.A3-wound certificate and Ex.A4-disability certificate, came to conclusion that on 28.8.2002, PW.2 examined PW.1 in his private clinic, taken x-ray and verified Ex.A3 wound certificate and he found Malunited fracture of both bones of right leg and malunited fracture lower end of radius and he assessed disability of 65% permanent partial disability and issued Ex.A4-disabiltiy certificate. PW.2 also certified that percentage of functional disability and loss of earning capacity is 65% to 70% and further stated that the injuries are possible in motor vehicle accident. PW.2 was cross examined at length by the Insurance Company but could not elicit any favourable information.

18. Admittedly, petitioner/claimant did not file any proof of age in the evidence as well as in the complaint. He stated that his age is 30 years. The same is mentioned in Ex.A3 which is considered by the Commissioner. Further, PW.2 supported Exs.A3 and A4 which establish that disability is 65% and loss of earning capacity is 70% as per the evidence of PW.2. Since PW.2 in the evidence stated that he has not specifically mentioned what type of tests he has undertaken while issuing disability certificate and the disability certificate was issued two years after the accident, the Commissioner, came to conclusion that PW.2 issued Ex.A4 with more or abnormal percentage

of disability and assessed loss of earning capacity at 45% for the purpose of compensation.

19. Though PW.1 in the evidence stated that he is earning an amount of Rs.3,000/- per month but did not produce any documentary evidence, but filed Ex.A5-salary certificate issued by respondent–owner of tipper lorry. To prove Ex.A5, respondent-owner of tipper lorry is not examined. Therefore, the Commissioner applied minimum wages and assessed the income of claimant/applicant at Rs.1800/- per month and taking into consideration the age of PW.1 as 30 years as on the date of accident took relevant age factor ie., 207.98 and loss of earning capacity at 45% though PW.2 in the evidence as well as in Ex.A4 taken 65% disability and loss of earning capacity as 70% and calculated the compensation as:

Compensation : 60 of the wage X relevant factor X percentage of disability = 1800x60/100x207.98x45/100=1,01,078=00. Further, found that by virtue of Ex.B3 and Ex.A6-xerox copy of insurance policy which is in force by the date of accident held that the appellant / respondent No.2 is also liable to pay compensation to the claimant/applicant by indemnifying liability of respondent No.1. Accordingly ordered that the respondents 1 and 2 are jointly and severally made liable to pay compensation of Rs.1,01,078-00 by way of demand draft in any nationalised bank in favour of the Commissioner for Workmen's Compensation and Dy. Commissioner of Labour, Ranga Reddy Zone, Hyderabad, under intimation to this Court within 30 days from the date of receipt of the Order.

20. Hence, in the facts and circumstances, discussed above, the Order of the Commissioner is legal, valid and do not suffer from any legal infirmity warranting interference.

21. In the result, the Civil Miscellaneous Appeal is dismissed while conforming the order passed in W.C. Case No.137 of 2001, dated:31-12-2003, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad. No order as to costs.

Miscellaneous Petitions, pending, if any, shall stand closed.

JUSTICE N. BALAYOGI

DATED:17-4-2018

gnr

HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL MISCELLANEOUS APPEAL No.1149 of 2008

DATED:17-4-2018

gnr