

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

C.M.A.No.966 of 2006

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the Insurance Company questioning the order dated 30.06.2006 in W.C.No.41 of 2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle-II, Visakhapatnam.

The case of the applicants before the Commissioner is that they are the legal representatives of late Sri D. Kondayya, who worked as Coolie with first opposite party (OP-1). It is their case that the deceased met with a fatal accident during the course of his employment with OP-1 on 30.11.2003. OP-1 is the owner of the tractor and trailer on which the deceased was travelling on that fateful day. The vehicle is insured with second opposite party (OP-2). The applicants therefore filed the WC case claiming compensation of Rs.4,96,800/- with interest and costs from OP-1 and OP-2.

OP-1 remained *ex parte*. OP-2 filed a counter denying the entire accident and arguing that the insurance policy does not cover coolies or labourers. The policy is intended to cover only one driver and not any other employee, as per OP-2.

Based on the above pleadings, the parties went to trial. For the applicants, AWs.1 & 2 were examined and Exs.A.1 to A.5 were marked. For the opposite parties, RW.1 was examined and the insurance policy was marked as Ex.R.1.

The Commissioner after examination of the facts and figures, the evidence and the submissions made by both the parties, awarded compensation of Rs.1,98,229/-. It is this order that is now assailed in the present appeal.

This Court has heard Sri M. Jeevan Reddy, learned counsel for the appellant/insurance company-OP.2. There is no representation for the respondents/applicants as well as OP-1.

It is found that the entire case of the appellant/insurance company rests on the facts that the policy in question does not cover the deceased who was a Coolie. According to the learned counsel for the appellant, the insurance policy applies to a 'driver' of the vehicle only. He points out that the schedule of premium shows only one employee is covered under the Workmen's Compensation Act and a premium of Rs.25/- was paid. According to the learned counsel, the only employee who is covered under this policy is the driver and that therefore, the deceased working as a coolie is not covered by the policy.

To the same effect is the oral evidence of RW.1, who deposed that the policy is an agricultural purpose policy and it does not cover coolies/labourers. According to the witness, no separate premium was paid for the coolies. The witness relied upon the endorsement No.40, which shows that personal accident coverage is for drivers, cleaners and conductors. Therefore, the argument of the learned counsel for the appellant is that the deceased is not covered by the

policy and the insurance company is not liable for payment of compensation.

This Court on an examination of the case finds that the policy in question does not state in the schedule of the policy that only the driver is covered. It merely states as “WC to employee 1”. Therefore, it covers one employee. If it is the case of the insurance company that the employee covered by this policy is only the driver, the proposal form by which the owner of the vehicle applied for insurance should have been filed to show that the owner of the vehicle wanted to insure the ‘driver’ alone. This is a fact which is within their knowledge and should have been proved by them by filing the proposal form etc. Failure to do so leads this Court to conclude that the policy covers one employee irrespective of the fact that he is a coolie or a driver.

In the course of his evidence, RW.1 also said that IMT-40 applies to the facts and circumstances of the case. This was stated in his re-examination. IMT-40 was also filed as part of Ex.R1. It clearly states that in consideration of payment of additional premium, the legal liability will be borne by the insurance company. This endorsement is applicable for buses, taxis, motorized three/four wheelers under commercial vehicles tariff. The witness has not explained how this is applicable to a tractor and trailer.

This Court notices a judgment of a learned single Judge of this Court in ***United India Insurance Co. Ltd., Warangal v.***

Mattedu Manikyam¹ wherein it is held clearly by considering Section 147 of the Motor Vehicles Act, 1988 that a labourer on a goods vehicle is statutorily covered. In para-6, the learned single Judge held as follows:

“6. But as seen from the judgment of the Tribunal below, as per the insurance policy, six labourers are allowed to travel in the tractor-trailor, whereas, at the time of occurrence of the accident, only three labourers were travelling on the tractor-trailor, including the deceased. When the tractor comes within the definition of goods vehicle, the question of travelling on the trailer or the tractor does not arise and it does not make any difference. As is evident from the facts and circumstances of the case, the trailer was carrying the load of wooden logs, thus there shall be no space in the trailer to travel in it along with the goods, belonging to the owner of the vehicle, who was employer of the deceased. Thus it is clear that they have travelled on the mudguard of the tractor along with the goods for unloading the same. Therefore, it can be viewed that at the time of occurrence of the accident, the deceased travelled on the mudguard of the tractor contrary to the terms and conditions of the insurance policy is not correct. Therefore, the award passed by the Tribunal below is perfectly in accordance with law, when premium was paid for six coolies in respect of the policy covering the tractor.”

Similarly in **P. Venkata Ramana v. Chintaguntla Kumari**², a learned single Judge of this Court held as follows in paras-11 & 14:

“11. Strong reliance is placed upon by the learned Counsel for the 5th respondent, on the judgment of this Court in **Dudekula Salabee v. R. Siva Sankar Reddy** (2009 ACJ 1053). That was a case under the Workmen's Compensation Act. The deceased was mentioned as Hamali on a Tractor. It was not clear as to whether Hamali was in the vehicle, before or after the unloading of the vehicle. That, however, does not make much difference. To determine the extent of liability under the policy, discussion was undertaken with reference to Section 147 of the Act. The learned Judge proceeded on the assumption that, in respect of the persons mentioned in proviso to sub-section (1) of Section 147, taking out of insurance policy is not mandatory and it is purely optional. The relevant paragraph reads as under:

"Para-14:- The first part, i.e., sub-section (1) of Section 147 of the Act, deals with the requirements of policies. In other

¹ 2000 (1) ALD 572

² 2010 (2) ALD 281

words, different kinds of policies can be taken covering different contingencies, different persons, different vehicles and different risks. Further, it appears from sub-section (1) of Section 147 of the Act that the owner has a discretion to take a policy or policies covering person or persons, in which case, basing on the nature and terms and conditions of the policy, the premium has to be paid. It implies that unless and until premium is paid, depending upon the nature of the policy or the terms and conditions of the policy, the insurer is not under obligation to pay the compensation beyond the scope of agreement under the policy. In other words, it is not mandatory for the insured to take policy or policies covering all types of persons or all types of vehicles or risks. Though under sub-clause (c) of clause (i) of proviso to sub-section (1) of Section 147 of the Act, it is mentioned that "if it is a goods carrier being carried in a vehicle" The policy need not be taken, I am of the view that it does not mean that the insurer is automatically liable. By necessary implication, when there is no requirement to take policy and, consequently, when no policy is taken, no risk can be covered by any policy. Therefore, the language employed in sub-clause (c) cannot be relied on nor it is useful in any manner to the claimant."

14. In **Ramashray Singh v. New India Assurance Company Limited** [2003 ACJ 1550 (SC)], the person, as regards whom the insurance coverage was claimed, was the one, in a tempo trucker, which is neither a public service vehicle, nor a goods carriage. He did not answer the description of Driver of a vehicle, Conductor on a public service vehicle, or a Coolie on a goods carriage. Therefore, it was held that, liability towards him is not covered under the policy. Such is not the case here. The vehicle is a goods carriage, and admittedly, the deceased was engaged as a Coolie for unloading the vehicle. Therefore, the view taken by the Tribunal, as regards the liability of the 5th respondent, cannot be sustained in law."

This Court also notices that under Section 147 of MV Act there is a statutory coverage to a driver engaged in driving the vehicle. Therefore, there was no need for a specific premium to be paid to cover a driver as urged by the learned counsel for the appellant. The proviso to Section 147 also makes it clear that the labourer carried in a goods vehicle is also entitled to a statutory coverage. Even otherwise, this case is filed under Workmen's Compensation Act and there is a premium that is paid specifically to cover one employee. Section 147 of MV Act makes it clear that up to the limit

provided for/covered by the Workmen's Compensation Act, there is a statutory coverage for persons carried in goods carriage.

Therefore, for both these reasons, this Court holds that the applicants are entitled to compensation under the Workmen's Compensation Act and that the grounds urged by the learned counsel for the insurance company are not valid or tenable in law. This Court holds that the impugned order is valid and correct and there are no reasons to interfere with the findings of the Commissioner.

In the result, the Civil Miscellaneous Appeal is dismissed. The order dated 30.06.2006 in W.C.No.41 of 2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle-II, Visakhapatnam is confirmed. 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: 12.06.2018
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