

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

C.M.A.No.39 of 2009

JUDGMENT:

This appeal is filed against the order dated 15.09.2008 in WC No.125 of 2005 by which the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Kadapa, awarded compensation of Rs.1,19,342/- against opposite parties 1 & 2.

The case of the applicant is that he was working as a driver of the lorry bearing No.AP04U 4477 belonging to first opposite party and insured with the second opposite party. On 27.11.2004 the vehicle met with an accident and the applicant sustained injuries out of and in the course of his employment. Therefore, the case is filed claiming compensation of Rs.2,00,000/-. For the applicant, AW.1 was examined and Exs. A.1 to A.5 were marked. AW.2 is the Doctor who certified the physical disability and the percentage of loss of earning capacity. RW.1 is an officer from the insurance company and the insurance policy was marked as Ex.B.1. After considering the oral and documentary evidence, the Commissioner came to a conclusion that the applicant is entitled to compensation of Rs.1,19,342/-. It is this order that is now impugned and assailed in this appeal by the insurance company.

This Court has heard Sri Naresh Byrapaneni, learned counsel for the appellant/insurance company and Sri D.

Kodandarami Reddy, learned counsel for the respondent/applicant.

According to the learned counsel for the appellant, the insurance company is not at all liable in this case and he argues that Ex.B.1 policy is issued specifically to cover third party basic, third party property damages and compulsory personal accident coverage only to the owner and driver. Therefore, the learned counsel argued that the driver of the vehicle is not covered by the policy of the insurance and that the insurance company is not liable. He relies upon the cases of a) **Ramashray Singh v. New India Assurance Co. Ltd. and Ors.**¹ ; b) **The New India Assurance Co. Ltd., rep. by its Branch Manager v. Lodya Shankar and Ors.**² ; and c) **Dudekula Salabee v. R. Siva Sankar Reddy and Anr.**³. Basing on these three cases, the learned counsel argued that unless and until specific premium is paid for covering the accident to persons like the driver, the insurance company is not liable. By pointing to the schedule annexed to the policy, he also argued that only the owner and driver and third parties are covered along with damages to the vehicle but not the 'employees' of first opposite party.

In reply to this, the learned counsel for the first respondent/applicant argued that the applicant is covered by Section 147 of the Motor Vehicles Act, 1988 which legally

¹ (2003) 10 SCC 664

² 2004 (3) ALD 400

³ 2008 (1) ALD 161

prescribes the policy that is necessary to be obtained and also states that a specific policy is not required to cover the compensation payable under the Workmen's Compensation Act in respect of a) an employee engaged in driving the vehicle; b) an employee engaged as a conductor or ticket examiner of a public vehicle; c) an employee being carried in a goods carriage. It is his contention that Section 147 of M.V. Act itself provides the coverage and therefore, there is no need to specifically take a separate policy nor is there any necessity to pay a specific premium.

The learned counsel for the first respondent/applicant also argued that only for coverage of persons over and above those specified in Section 147 of M.V. Act, a specific policy may be necessary and a separate premium should be paid. His argument is that the driver; ticket examiner and a person carried in the goods carriage are eligible to receive compensation.

This Court after a review of the submissions notices that the policy in question is issued to a "goods carrying commercial vehicle". The same is visible from a reading of the policy itself. The witness who deposed on behalf of the insurance company clearly admitted that the policy was in force as on the date of the accident. The only point urged is that separate premium was not paid by the owner to cover the employee in question. Even in the cross-examination, he admits that policy is in force.

Therefore, the short and simple point that is argued is about the coverage of the applicant under Ex.B.1-insurance policy. Admittedly, the applicant in this case is a driver of the vehicle in question. Therefore, a plain language reading of Section 147 of M.V. Act makes it clear that his case is covered by the “Statute” itself and that a separate policy or premium is not required to be paid in case of the applicant. This Court is of the opinion that the applicant is covered by the policy in question and therefore, this Court does not find any infirmity in the order passed by the Commissioner for Workmen’s Compensation, Kadapa. As no arguments were advanced on the other points like wages, age etc., this Court is also not going into these issues. Although a point relating to the interest is raised, this Court finds that the award of interest is in tune with the provisions of the Workmen’s Compensation Act and also the decisions of the Hon’ble Supreme Court of India starting from ***Ved Prakash Garg v. Premi Devi and others***⁴ and other subsequent judgments.

The learned counsel for the appellant lastly pointed out that the policy is subject to the Indian Motor Tariff (IMT) conditions and drew the attention of this Court to the policy which stated that the policy is subject to the Rules 7, 21, 20 and 17 of IMT 2002. He also drew the attention of this Court to IMT 17 and argued that the personal accident coverage to the paid drivers, cleaners and conductors can only arise when

⁴ AIR 1997 SC 3854

the additional premium is paid. He therefore argued that unless the additional premium is paid by the employer for drivers, cleaners and conductors, they are not eligible for claiming compensation nor is second opposite party/ appellant liable to pay compensation because of the restrictions contained in the policy.

In reply thereto, the learned counsel for the first respondent again argued that under Section 147 of M.V. Act for payment of compensation up to the limits specified and as per the Workmen's Compensation, there is no need for payment of premium for the category of employees mentioned in Section 147 of M.V. Act which provides statutory coverage as per the Workmen's Compensation Act. If the owner wanted to pass on a greater benefit and also coverage over and above the compensation as per the provisions of Workmen's Compensation Act, then IMT 17 would apply for which specific premium is payable.

The learned counsel for the first respondent/applicant pointed out that as per the Workmen's Compensation Act, for the loss of one eye, the percentage of loss of earning capacity is fixed as 40% but under IMT 17, the scale of compensation is fixed as 50%. Similarly, he argued that loss of one limb and one eye in IMT 17, the scale of compensation is 100% and the same differs from the schedule 1/2 of the Workmen's Compensation Act. Therefore, his argument is that for payment of compensation under IMT 17, additional premium

is necessary since it allows for claiming of compensation at a rate and for reasons which are different from the schedule etc., as fixed under Workmen's Compensation Act.

The words used in IMT-17 are clear "in consideration of the payment of additional premium it is hereby understood and agreed that the insurer undertakes to pay compensation on the scale provided below" and also whilst mounting or dismounting from or travelling in the insured vehicle and caused by violent external means.

This argument of the first respondent/ applicant is convincing to this Court as compared to the argument advanced by the learned counsel for the appellant. If additional premium is paid, the scale of compensation is fixed under IMT 17 over and above the provisions of Workmen's Compensation Act for certain accidents only specified therein. In the case on hand, the compensation is claimed as per the Workmen's Compensation Act. Therefore, IMT 17 will not really apply.

For all the above reasons, this Court finds that there are no valid grounds made out 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: 13.04.2018
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