

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY ONE**

PRESENT

THE HONOURABLE SMT JUSTICE P.MADHAVI DEVI

CIVIL MISCELLANEOUS APPEAL NO: 236 OF 2007

(Appeal filed Under Section 30 of Workmen's Compensation Act, aggrieved by the Order and Decree dated 29.08.2006, passed in WC No.9 of 2002, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ranga Reddy District-II, T.ANJAIAH KARMIKA SANKSHEMA BHAVAN, RTC 'X' ROADS, HYDERABAD-20)

Between:

The United India Insurance Company Limited, Rep by its Divisional Manager,
Divisional Office-XI, 3rd Floor, Tirumala Towers, Malakpet, Hyderabad.

...APPELLANT/OPPOSITE PARTY.NO.2

AND

1. Smt.P.Shyamala, W/o.late P.Mallesha, Age: 27 years Occ: Household
2. P.Ramulu, S/o.Pullaiiah, Age: 50 years, Occ: Agriculture
3. Smt.P.Anasuya, W/o.P.Ramulu, age: 45 years, Occ: Household
All are R/o.Annojiguda Village, Kandukur Mandal, Ranga Reddy District.

...RESPONDENTS/PETITIONERS

4. C.Shankaraiah, S/o.Late Veniah, Age: Major, Occ: Business
R/o.Kandukur [V] & [M], Ranga Reddy District.

...RESPONDENT/ RESPONDENT

CMAMP. NO: 484 OF 2007

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of the order dated 29.8.2006, made in W.C.No.9 of 2002, on the file of the Commissioner for Workmen and Assistant Commissioner of Labour, Ranga Reddy District-II at Hyderabad.

Counsel for Appellant : SRI. A RAMAKRISHNA REDDY

Counsel for Respondent No.2: SRI KOTA SUBBA RAO

Counsel for the Respondent No.3: SRI MOHAMMED SHAKEEL

The Court made the following JUDGMENT

THE HONOURABLE SMT. JUSTICE P. MADHAVI DEVI
CIVIL MISCELLANEOUS APPEAL NO.236 OF 2007

JUDGMENT:

This Civil Miscellaneous Appeal has been filed by the Opposite Party No.2/Insurance Company challenging the Award of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ranga Reddy District-II at Hyderabad in W.C. No.9 of 2002 dated 29.08.2006.

2. The brief facts leading to filing of this Appeal are that one Sri P. Mallesh was working as a driver on tractor and trolley bearing No.AP28Q-3863 and AP28Q-3864 belonging to the opposite party No.1. On 12.03.2001, the said driver was driving the same with a load of bricks from Rajhuloor Village to Annojiguda towards Thimmaipally. When the said tractor and trolley reached near the Manneni Jallkatta of Thimmaipally Village at about 04.30 p.m. the said tractor and trolley turned turtle due to loss of control by the driver and the driver died on the spot and other labourers travelling in the trolley also sustained grievous injuries.

3. The dependants of the driver filed the application before the Commissioner for Workmen's Compensation seeking compensation of Rs.2,50,000/-. The applicants claimed that the deceased was 26 years of age and that he was being paid Rs.2,700/- per month as wages by the respondent No.1/owner of the vehicle. In the

Workmen's Compensation case, the owner of the vehicle appeared and confirmed the employment of the deceased as driver and as regards the wages, he submitted that he was paying Rs.2,000/- as wages. He also stated that the deceased Mallesh had possessed a licence to drive the vehicle and that he has verified the same before employing him as a driver. The Insurance Company denied that there was any employee and employer relationship between the deceased and the owner of the vehicle and also that the deceased held a valid driving licence at the time of the accident. The insurance company also stated that the respondent No.1 used the tractor and trolley for commercial purpose violating the policy conditions of the usage of tractor-cum-trolley for agricultural purposes and therefore, they are not liable to pay the compensation. They also disputed the age of deceased as 26 years.

4. The learned Commissioner for Workmen's Compensation, after considering the evidence available on record, held that the employee and employer relationship between the deceased and respondent No.1 was proved and the age of the deceased was also proved to be 28 years in the post-mortem report. He accordingly adopted the age of the deceased as 28 years and computed the compensation by adopting the wages of the deceased at Rs.2,000/- per month and awarded compensation of Rs.2,11,790/-. Aggrieved by the compensation granted by the Commissioner for Workmen's Compensation, the

Insurance Company is now in appeal before this Court by raising the following substantial questions of law:

- i) The learned Commissioner failed to see that the alleged death of driver was occurred while he was on duty as driver of Tractor and Trailer and when one's specific plea of the appellant-Insurance Company is that the driver do not have a license at all and in the absence of production of license or copy of the license before him, whether the Commissioner is competent to entertain application in a case of death of driver in the absence of production of license or copy of license is the substantial question of law that arises for consideration?
- ii) The learned Commissioner failed to see that the respondent No.1/opposite party No.1 used the vehicle for commercial purpose: duly violating as to the terms and conditions of the policy, as such the appellant insurance company is not liable to pay compensation in such circumstances whether the Commissioner is entitled to entertain application despite violations and terms and conditions of the policy by the respondent No.1/insured is also substantial question of law that arises for consideration?

5. Heard Sri A. Ramakrishna Reddy, learned counsel for the appellant/insurance company and Sri Kota Subba Rao, learned counsel for the second respondent/second applicant. Perused the material placed on record.

6. The learned counsel for the appellant/insurance company submits that under Section 2 (9) of the Motor Vehicles Act, 1988, 'driver' is defined to include, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steer man of

the drawn vehicle. Under Section 2 (10) of the Act, 'driving licence' is defined to mean the licence issued by a competent authority under Chapter-II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description. He further submitted that under Workmen's Compensation Act, 1923, Section 2 (n) (ia) (c), "workman" means any person who is a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle.

7. The learned counsel for the appellant/insurance company submits that since no driving licence has been produced by the applicants to prove that the deceased person was holding a valid driving licence and that he was a driver employed by the owner of the vehicle, the Commissioner has erred in treating the deceased as a workman under Workmen's Compensation Act and awarding compensation thereunder. In support of this contention, the learned counsel for the appellant relied upon a judgment of the Hon'ble Supreme Court of India in *Beli Ram Vs. Rajinder Kumar & another* [Civil Appeal Nos.7220-7221 of 2011], dated 23.09.2020 to argue that it is the responsibility of the owner of the vehicle to verify whether the person who is entrusted with the vehicle to drive the same possessed a valid licence or not. He therefore submitted that since the driving licence was not filed either by the applicants or opposite party No.1/owner of the vehicle, opposite party No.1 has not fulfilled the

conditions of the insurance company and hence, the insurance company was not liable to pay the compensation.

8. The learned counsel for the appellant/insurance company also placed reliance upon a decision of this Court in CMA No.419 of 2006, dated 24.03.2021 wherein this Court held that when a specific objection was raised before the authority under the Workmen's Compensation Act that the deceased did not have a valid licence, the burden is on the applicants to establish that, as a matter of fact the deceased was employed with the respondent/owner and further that he had a valid driving licence at the time of the accident, and in the absence of any evidence, the insurance company is not liable to pay the compensation. For coming to this conclusion, this Court relied on *Beli Ram's* case (cited supra).

9. On the other hand, the learned counsel for the second respondent/second applicant submits that the respondent/owner of the vehicle had clearly submitted before the learned Commissioner for Workmen's Compensation that he has verified the driving licence of the deceased before employing him as driver of the vehicle and therefore, according to him, the decisions relied upon by the insurance Company are not applicable to the case on hand. In support of his contention that where there is any ambiguity as to whether the petitioner held a driving licence or not, the presumption should be

drawn in favour of the workman, the learned counsel for the second respondent/applicant placed reliance on the following decisions:

- i) *Rita Devi v. New India Assurance Co. Ltd.* [2000 ACJ 801].
- ii) *Parminder Singh v. New India Assurance Company Ltd.* [2019 ACJ 2401].
- iii) *K. Varalaxmi v. United India Insurance Co. Ltd.* [2015 ACJ 2232].
- iv) *United India Insurance Co. Ltd. v. Lehu* [2003 ACJ 611].
- v) *Jaya Biswal v. Branch Manager, Iffco-Tokio General Ins. Co. Ltd.* [2016 ACJ 721].
- vi) *P. Narasimha Reddy v. K. Ramachander* [2004 (4) ALT 511].
- vii) *T.S. Shylaja v. Oriental Insurance Co. Ltd.* [2014 ACJ 480].
- viii) *Oriental Insurance Co. Ltd., Tanuku v. M. Nagaraju* [2021 (3) ALD 227 (AP)].
- ix) *National Insurance Co. Ltd., Basheerbagh, Hyd. V. T. Sabitha* [2016 (1) ALD 656].
- x) *Gurmail Singh v. Bajaj Allianz General Ins. Co. Ltd.* [2019 ACJ 713].
- xi) *United India Insurance Co. Ltd., Sec'bad v. Vakiti Balraju* [2012 (3) ALD 66].
- xii) *Golla Rajanna Etc. Etc. v. the Divisional Manager and Anr. Etc.* [2017 (1) ACJ SC-1].

10. Having regard to the rival contentions and the material on record, in respect of first substantial questions of law, the relevant case law is the decision of the Apex Court in *Beli Ram's* case (cited supra). In the said case, it was held as under:

"8. The only question which has been debated before us, is as set out at the inception of the judgment. The appellant sought to rely upon the recent judgment of this Court, *Nirmala Kothari v.*

United India Insurance Company Limited [(2020) 4 SCC 49]. The question of law examined in this judgment was as to what is the extent of care/diligence expected of the employer/insured while employing a driver. The legal position regarding the liability of the insurance company when the driver of the offending vehicle possessed an invalid/fake driver's licence was adverted to for answering this question, by referring to earlier judicial pronouncements and the same was culled out in para 12 as under:

"12. While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the insurance company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the insurance company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.

9. We have heard learned counsel for the parties and on a query being raised, whether there is a view taken on the question as to what would be the consequence of a valid driving licence having expired both the learned counsel for the appellant and learned counsel for respondent No.2 insurance company stated that there was no direct view on this point. We even posed a question qua any judicial view of the High Courts in this behalf, but the answer to the same was also in the negative. We reserved the orders because we wanted to satisfy ourselves over this aspect.

10. We have not been able to trace out any judgments of this Court but there are judicial pronouncements of the High Courts dealing with the issue."

Thus, it can be seen that in the said case, the question was as to what would be the consequences of a valid driving licence having expired, whereas in the case before this Court, the case is whether the deceased driver possessed valid driving licence at the time of accident. The owner of the vehicle/respondent No.1 in the WC admitted in his chief

examination that he had employed the deceased workman as driver after verifying his driving licence. As held by the Apex Court in the case of **Nirmala Kothari** (cited supra), if the employer verifies and is satisfied that the driving licence appears to be genuine, he is not expected to further investigate into the authenticity of the licence unless there is reason to believe otherwise. In this case, the deceased was the driver and the claimants may not have been in a position to produce the driving licence of the deceased. Therefore, in the absence of any negative evidence, the evidence of the employer has to be accepted.

11. In the case of **K. Varalaxmi** (cited supra) which has been relied upon by the learned counsel for respondents, the Coordinate Bench of this Court held that while interpreting the provisions of benevolent Act, where two views are possible, the view favourable to the persons for whose benefit the Act is enacted, has to be taken into consideration to achieve the real object.

12. In the case of **Lehru** (cited supra), the Hon'ble Supreme Court of India held as under:

"15.....The aim and purpose being that on insurance company would be available to pay. The business of the company is of insurance. In all businesses there is an element of risk. All persons carrying on business must take risks associated with that business. Thus it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time innocent parties must not be made to suffer or loss. These

provisions meet these requirements. We are thus in agreement with what is laid down in aforementioned cases, viz., that in order to avoid liability it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance company must establish that the breach was on the part of the insured."

Thus, the first substantial question of law is decided against the appellant.

13. As regard the second substantial question of law is concerned, this Court finds that in the case of **United India Insurance Co., v. Vakiti Balraju & others** (cited supra), this Court held as under:

"9 A strong objection raised on behalf of the appellant is that the driver of the accident vehicle did not hold valid licence. Virtually, no evidence was adduced in this regard. Assuming that the driver did not hold licence, that hardly would be of any relevance in determining the liability arising on account of the death of another workman. Though Section 147 of the Motor Vehicles Act, 1988 mandates that an insurance policy taken out in respect of a vehicle shall cover the one arising under the Act, the grounds that can be raised by an insurer in this regard are relatively restricted, compared to the claims under the Motor Vehicles Act, 1988."

14. Therefore, even if there is a violation of the conditions of the policy, the insurance company is liable to pay the compensation and recover the same from the owner of the vehicle. In this case, the copy of the insurance policy is not filed to determine as to the coverage of the policy. Therefore, no decision can be given on this issue as to whether the insured has violated the conditions of the policy. However, the responsibility of the appellant towards the deceased is

not absolved and this question of law is answered against the appellant.

15. The Civil Miscellaneous Appeal is accordingly dismissed. No order as to costs.

16. Pending miscellaneous petitions, if any, in this CMA shall also stand dismissed.

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SD/-B.S.CHIRANJEEVI
JOINT REGISTRAR

SECTION OFFICER

- To,
1. The Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ranga Reddy District-II, T.Anjaiah Karmika Sankeshema Bhavan, RTC 'X' Roads, Hyderabad-20 (With Record)
 2. One CC to Sri A. Ramakrishna Reddy, Advocate [OPUC]
 3. One CC to Sri Mohammed Shakeel, Advocate [OPUC]
 4. One CC to Sri Kota Subba Rao, Advocate [OPUC]
 5. Two CD Copies
 6. One Spare Copy
- PCSD
gbr

HIGH COURT

DATED: 31/12/2021

JUDGMENT

CMA.No.236 of 2007



DISMISSING THE CMA

NO COSTS

ATM 7
27/1/2022