

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: 800 OF 2005

(Appeal filed Under Section 30 of Workmen's Compensation Act, aggrieved by the order dated 30.01.2001 passed in W.C.Case No.150 of 2003(F), on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Nalgonda)

Between:

The New India Assurance Co. Ltd, Divisional Office-II, Anasurya Complex,
3-6-10, Himayathnagar, P.B.No.1051, Hyderabad, rep by its Divisional Manager.

...APPELLANT/OPPOSITE PARTY NO.2

AND

1. Shaik Noorjahan Begum, W/o. Late China Moulana, Age:30 years Occ: Household
2. Shaik Shaheena, D/o. Late China Moulana, Age:12 years
3. Shaik Arif, S/o. Late China Moulana Age:5 years
4. Shaik Karishma, D/o. Late China Moulana, Age:3 years
5. Shaik Wali Saheb, S/o. Lal Saheb Age:60 years
6. Shaik Mastan Bee, W/o. Wali Saheb Age:55 years, Occ:Household.

All are R/o. Yerrupalem Village & Mandal, Khammam District.

Respondents No.2 to 5 are Minors represented by their Mother Respondent:1.

...RESPONDENTS/CLAIMANTS

7. B. Venkateshwarlu, S/o. Pedda Beeraiah, Owner of Eicher Tractor bearing No. AP 36 T 5421 R/o. Konijerla (V), Khammam M & D.

...RESPONDENT/ RESPONDENT NO.1

CMAMP. NO: 15076 OF 2004

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 grant interim stay of withdrawal of the deposited amount of RS. 2,09,660/- to the credit of W.C. Case.No.150 of 2003 [F], on the file of CWC & ACL, Nalgonda by the R-1.

CMAMP. NO: 1438 OF 2006

Between:

1. Shaik Noorjahan Begum, W/o. Late China Moulana, Age:30 years Occ: Household
2. Shaik Shaheena, D/o. Late China Moulana, Age:12 years
3. Shaik Arif, S/o. Late China Moulana Age: 5 years
4. Shaik Karishma, D/o. Late China Moulana, Age:3 years
5. Shaik Wali Saheb, S/o. Lal Saheb Age:60 years

All are R/o, Yerrupalem Village & Mandal, Khammam District.

Respondents No.2 to 5 are Minors represented by their Mother Respondent:1

...PETITIONERS/RESPONDENTS

AND

1. The New India Assurance Co. Ltd, Divisional Office-II, Anasuya Complex,
3-6-10,Himayathnagar,P B.No.1051,Hyderabad,rep by its Divisional Manager

....RESPONDENT/PETITIONER

2. Shaik Musran Bee,w/o Wali Saheb(died)

3. B. Venkateshwarlu, S/o. Fedda Beeraiah, Occ: Owner of Eicher Tractor bearing
No. AP 36 T 5421, R/o. K. nijeria (V), Khammam M & D.

(Respondent No.3 is not necessary party in this petition)

Petition under Section 151 CPC, praying that in the circumstances stated in the counter affidavit filed in support of the petition, the High Court may be pleased to vacate the interim stay granted on 13.10.2004, in CMP No.15076 of 2004, in CMA.No.800 of 2005.

Counsel for the Appellant : SRI. T RAMULU

Counsel for Respondent in CMA Nos. 1 to 6 : SRI V. RAGHU

Counsel for Respondent No.7 : SRI M. V. DURGA PRASAD

The Court made the following JUDGMENT:

THE HONOURABLE SMT. JUSTICE P. MADHAVI DEVI

CIVIL MISCELLANEOUS APPEAL NO.800 OF 2005

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the New India Assurance Company Limited against the award passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda in W.C.No.150 of 2003 dt.30.04.2004.

2. Brief facts leading to the filing of this Appeal are that one Sri Shaik Moulana worked as labourer on the tractor bearing No.AP 36T 5421. On 20.12.2002 at about 4.00 AM, when he was returning from Kodad to Janareddynagar in the tractor after completion of repairs of the tractor, there was an accident and the labourer died on the spot. The dependents of the deceased filed claim petition before the Commissioner for Workmen's Compensation stating that the deceased was 32 years old and was in receipt of Rs.3,000/- per month towards wages. The Opposite Party No.2-insurance company had contended before the Commissioner that the accident had occurred at 4.00 A.M. on 20.12.2002 and there was no need for the labourer to be there on the tractor. The Commissioner however did not agree with this contention of Opposite Party No.2 and held that there was no rule that the vehicles could not be plied in the nights or that the labourers need

not be with the vehicles in the night. He also observed that the deceased accompanied the tractor to help the driver in getting it repaired. As regards the second objection of the Opposite Party No.2 that the labourers are not covered under the policy and hence the insurance company is not responsible for the payment of compensation, the Commissioner observed that the policy shows that the premium of Rs.510/- was collected for the tractor and the policy does not specify any condition of non-coverage of employees engaged on the tractor. He thus rejected the second objection also of the Opposite Party No.2 and accordingly he awarded a compensation of Rs.2,09,660/- for the death of the deceased in the accident.

3. The insurance company has filed this Appeal stating that the insurance policy of Opposite Party No.1 does not cover the risk of the labourer as no additional premium was paid for coverage of the labourer. The appellant places reliance upon the decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Jugal Kishore and others**¹ and also the case of **Ramashrya Singh Vs. New India Assurance Company Limited**².

4. Learned counsel for the appellant insurance company, Sri P. Ramulu, also placed reliance upon the decision of the High Court for the State of Telangana and the State of Andhra Pradesh in the case of **New India Assurance Co. Ltd., rep. by its Divisional Manager,**

¹ 1988 (1) ACJ 270

² 2003 (3) ACJ 1550 (2003) 10 SCC 664

Kurnool Vs. Kurva Nagamma and others³, wherein after considering the decision of the Hon'ble Supreme Court in the case of **Ramashrya Singh Vs. New India Assurance Company Limited** (2 supra), the High Court has held that while Motor Vehicles Act protects the interests of the driver of every motor vehicle, the Conductor or Ticket Examiner of a public service vehicle and an employee of a goods carriage vehicle, no such protection is available to any other category of employees or persons unless their risk is covered by payment of premium. In the said case, the Hon'ble High Court also considered that the policy required payment of Rs.15/- for covering the risk of each person other than the driver and cleaner. Since no such premium was paid, it was held that the policy did not cover the labourers. Similar decision was also given in the case of **Divisional Manager, New India Assurance Company Ltd., Nizamabad Vs. Zaheer Ahmed and others**⁴, wherein it was held that where insurance policy shows that the owner of the lorry paid premium only for two persons, i.e., for driver and cleaner being the two employees covered by the policy under the provisions of Section 147 of the Motor Vehicles Act, the injured claimants i.e., labourers are not covered by the policy. Therefore, he prayed for setting aside of the award of the Commissioner for Workmen's Compensation.

³ 2013 (1) ALT 661

⁴ 2015 (2) ALT 154

5. Learned counsel for the claimants, Sri M.V. Durga Prasad, on the other hand, has filed a copy of the insurance policy to suggest that the premium was paid for the trailer which also covers the labourers who were on the trailer. He also placed reliance upon the decision of this Court in the case of **New India Assurance Co. Ltd., Kadapa Vs. Pujala Chenchu Nagaiah and others**⁵, wherein it was held that the contention of the appellant insurance company that it is not under obligation to cover liability arising out of death or bodily injuries to a cleaner, unless extra premium is paid, cannot be accepted.

6. Having regard to the rival contentions, this Court finds that the decision of this Court in the case of **New India Assurance Co. Ltd., Kadapa Vs. Pujala Chenchu Nagaiah and others** (5 supra) is distinguishable on facts as in that case the deceased was a cleaner of the vehicle, whereas in the case on hand, the deceased was a labourer and his case is clearly covered by the decision of the Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Jugal Kishore and others** (1 supra) as well as the decision of this Court in the case of **New India Assurance Co. Ltd., Kadapa Vs. Pujala Chenchu Nagaiah and others** (5 supra). Admittedly, in this case, the policy did not include the risk of the labourer and the owner had not paid any extra premium to cover the persons other than the driver and the cleaner. In such cases, the owner

⁵ 2011 (1) ALD 596

of the vehicle shall be responsible for the injury caused to the third party. However, the insurance company would have to make the payment of compensation to the claimants under the Workmen's Compensation and thereafter recover from the owner of the vehicle, who has breached the conditions of the policy, as held by this Court in the case of **New India Assurance Co. Ltd., Kadapa Vs. Pujala Chenchu Nagaiah and others** (5 supra). Therefore, the Appeal of the insurance company as against respondents 1 to 6 is dismissed. As against respondent No.7 is concerned, from the copy of the insurance policy, the trailer is insured as a non-agricultural vehicle and therefore, there is no violation of any of the terms and conditions of the policy. Therefore, the appeal against respondent No.7 is also dismissed.

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

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

//TRUE COPY//

SD/-B.S.CHIRANJEEVI
JOINT REGISTRAR

SECTION OFFICER

To,

1. The Commissioner for Workmen's Compensation and Assistant Commissioner of Labour: at Nalgonda (with records)
2. One CC to SRI. T. RAMULU, Advocate [OPUC]
3. One CC to SRI. V. RAGHU, Advocate [OPUC]
4. One CC to SRI. M.V. DURGA PRASAD, Advocate [OPUC]
5. Two CD Copies
6. One Spare Copy

PCSD
TR

HIGH COURT

DATED:31/12/2021

JUDGMENT

CMA.No.800 of 2005



Dismissing the CMA
NO COSTS

ASM (7)
22/1/2022