

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

C.M.A.No.951 of 2013

JUDGMENT:

The United India Insurance Company Limited has filed this Civil Miscellaneous Appeal assailing the order dated 02.05.2009 in W.C.No.1 of 2004 on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Warangal.

2. The applicants/claimants have filed W.C.No.1 of 2004 before the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Warangal, under Section 22 of the Workmen's Compensation Act, 1923 (for short 'the Act') claiming compensation in respect of the death of Aeku Babu, who is the husband of applicant No.1, son of applicant No.2 and father of applicant No.3-minor child. This case was filed against the opposite party Nos.1 to 3 alleging that opposite party No.1 is the driver of the vehicle bearing No.AHK 9225, opposite party No.2 is the insurance company,

whereas opposite party No.3 is the owner of the said vehicle, which was insured with the opposite party No.2.

3. The brief facts of the case are that the opposite party No.1 has requested the deceased to come along with him on the lorry bearing No.AHK-9225 loaded with coal from Bhupalpally to Warangal during the intervening night of 02nd/03rd January, 2003 at about 12:30 a.m., accordingly, the deceased accompanied the opposite party No.1. After one hour, the said lorry while proceeding with load of coal on reaching the outskirts of Kamareddypally met with an accident and the deceased-workman, who was in the cabin died at the spot and opposite party No.1-driver sustained injuries. On a report lodged by the applicant No.1, the Police, Parkal registered a case in Crime No.5 of 2003 for the offence punishable under Section 304-A of the Indian Penal Code and investigated into.

4. During enquiry, notice was issued to the opposite party Nos.1 to 3. The opposite party No.1 has filed a separate counter admitting that he was the driver of the said vehicle, wherein the deceased was employed as

Assistant Driver on the monthly wages of Rs.4,000/- per month and that the said lorry met with an accident during the intervening night of 2nd/3rd January 2003 and the deceased-workman died at the spot due to the injuries. The said lorry was owned by the opposite party No.3 and insured with opposite party No.2.

5. The opposite party No.3, who is the owner of the vehicle, also filed detailed counter almost in similar lines with that of the counter of opposite party No.1 stating that the deceased was employed by him as Assistant Driver and that he met with an accident during the intervening night of 02nd/3rd January 2003 and died on the spot. It is mentioned in the counter that the said vehicle was insured with opposite party No.2.

6. In the counter filed by the opposite party No.2, the said fact of opposite party No.3 as owner of the vehicle and opposite party No.1 as driver of the vehicle is admitted. It was further averred in the counter that the said vehicle AHK-9225 was insured with them, however, denied that

there is no such post of Assistant Driver and any such person is not covered under the insurance policy.

7. Based on the pleadings, the Court below has framed the following issues:

1. Whether there was employer employee relationship between the opposite party No.3 and the deceased-workman as on the alleged date of accident and if so, the nature of work undertaken by the deceased-workman at the time of alleged accident?
2. Whether there was an accident out of and in the course of employment of the deceased-workman with the opposite party No.3 resulting in his injuries and death?
3. The exact age and wage of the deceased workman in case compensation is due; and
4. Whether the opposite party No.2 is liable to pay compensation if due?.

8. During enquiry on behalf of the applicants, PWs.1 and 2 were examined and Exs.A.1 to A.7 documents were marked. No witness was examined on behalf of opposite party Nos.1 and 3, whereas the Administrative

Officer of the Opposite Party No.2/Insurance Company is examined as RW.1 and the documents of insurance policy and notification of minimum wages are marked as Exs.R.1 and R.2. The Court below on careful appreciation of the entire material available on record allowed the claim made by the applicants and directed the opposite Nos.2 & 3 to deposit the said amount of Rs.3,88,374/- towards compensation, interest and costs within 30 days from the date of receipt of copy of the order. Feeling aggrieved by the said orders, the opposite party No.2-insurance company has filed this Civil Miscellaneous Appeal.

9. Heard the learned counsel for the appellant/ insurance company and the respondents. In the light of the rival contentions and the material available on record, the following points arise for consideration:

- (i) Whether the deceased was a second driver/ Assistant driver and not covered by the insurance policy as alleged by the appellant/insurance company?
- (ii) Whether the order impugned is sustainable.

Point Nos.(i) & (ii):

10. The appellant/insurance company has mainly resisted the order impugned on two counts. *Firstly*, the deceased was not a workman and there is no such post as Assistant Driver and *secondly* such Assistant Driver is not covered by the insurance policy. Whereas, the learned counsel for the respondents/applicants would submit that all these contentions were raised before the Court below and they were suitably answered. There is no irregularity or jurisdictional error committed by the Court below, no document is filed by the insurance company to show that the deceased was second driver and evidence available on record would establish that the deceased was a cleaner on the vehicle of opposite party No.3. Whereas, opposite party No.1 was a regular driver and that the relationship of employer and employee is established and there is no dispute to the effect that the deceased was found in the cabin of lorry in the course of his employment as workman on the said lorry, the accident occurred.

11. Perused the evidence of PWs.1 & 2 and the averments of the counter filed by opposite party Nos.1 & 3 wherein it is clearly mentioned that the deceased was employed as cleaner by opposite party No.3 on his lorry bearing No.AHK-9225 on a monthly wages of Rs.4,000/-. This evidence of PWs.1 & 2 remained consistent throughout the cross-examination.

12. Be it stated that on behalf of the opposite party No.2, the Administrative Officer of the United India Insurance Company Limited is examined as RW.1. In his evidence, Exs.R.1 and R.2 are marked. Ex.R.1 is copy of insurance policy, whereas Ex.R.2 is the notification dated 29.03.2001 of the Government of Andhra Pradesh, wherein the minimum wages in respect of various categories of employees engaged private motor transport have been fixed. It is stated by RW.1 that there is no post as Assistant Driver. When there is a clear evidence of PWs.1 & 2 and the pleadings in the petition to the effect that the deceased was only employed as cleaner on the said vehicle, the assertion of RW.1 or averments of the counter that the deceased was Assistant Driver or that there is no such

person covered by Ex.R.1 and Ex.R.2, by itself will not absolve the opposite party Nos.2 & 3 from their liability to pay compensation to the applicants.

13. It is a fact that there is no category of Assistant Driver in the said G.O., but the evidence of PW.2 is crystal clear that the deceased was working as cleaner and occasionally he also used to drive the vehicle, accordingly, he is called as Assistant Driver. PW.2 has categorically stated in his cross-examination on behalf of the appellant herein that a cleaner also drives the vehicle during night times and denied the suggestion that the deceased never worked as Assistant Driver or cleaner on the vehicle of opposite party No.3. The contents of Ex.A.4-accident report of MVI and Ex.A.3-inquest report remained uncontraverted. The Ex.A.7 is the photocopy of driving licence of the deceased- Aeku Babu. Thus, though he was employed as cleaner, there is ample evidence on record to show that occasionally during night times he used to drive the vehicle.

14. Therefore, the deceased was also having driving licence and there is no dispute about the said fact. The Court below while relying on the principles laid in **P.J. Narayan Vs. Union of India and others**¹ and **New India Assurance Company Limited Vs. Harshadbhai, Amrutbhai, Modhiya and another**² has held that both the opposite party Nos.2 and 3 are jointly and severally liable for payment of compensation to the applicants and dependents of the deceased and accordingly directed them to deposit an amount of Rs.3,88,374/- towards compensation, interest and costs. I do not find any jurisdictional error committed by the Court below. The evidence on record would establish that the deceased was holding valid driving licence, he was working as cleaner on the vehicle of opposite party No.3, wherein opposite party No.1 was driver and the risk of the deceased is covered by Ex.R.1 insurance policy as cleaner.

15. In that view of the matter, in my considered opinion, the order impugned does not warrant any

¹ 2004 ACJ 452

² 2006 ACJ 1699

interference by this Court and it is sustained. Accordingly, both the point Nos. (i) and (ii) are answered in favour of the respondents/applicants/claimants and against the appellant/opposite party No.2/insurance company.

16. In the result, the Civil Miscellaneous Appeal is dismissed confirming the order dated 02.05.2009 in W.C.No.1 of 2004 on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Warangal in its entirety. Consequently, the claimants/ respondents/applicants are entitled for withdrawal of entire amount of compensation as awarded in W.C.No.1 of 2004 and deposited before the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Warangal in terms of the order impugned. However, in the circumstances of the case, there shall be no order as to costs.

Miscellaneous Applications, if any pending in this appeal, shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 09.11.2022
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