

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

CIVIL MISCELLANEOUS APPEAL No.188 OF 2022

ORDER:

This Civil Miscellaneous Appeal has been filed by the second opposite party in E.C.NO.15 of 2018 on the file of the Commissioner for Employees Compensation and Assistant Commissioner of Labour-II, under Section 30 of the Employees Compensation Act,1923. Respondent Nos.1 to 3 herein are applicants and respondent No.4 hearing was 1st opposite party in the said case. Respondent Nos.1 to 3 have filed an application before trial Court and sought for an amount of Rs.7,50,000/- as compensation for the death of husband of 1st respondent and father of respondent Nos.2 and 3 for his death on account of a road accident. The learned Commissioner allowed the claim and awarded Rs.6,16,584/- and fixed the liability against the appellant/2nd opposite party and respondent No.4/1st opposite party. Feeling aggrieved by the said order, the appellant has filed this appeal.

2. As could be seen from the order filed along with the present appeal, it shows that respondents 1 to 3 herein have filed E.C.No.15 of 2018 before the trial Court stating that said Butti Ramulu who hereinafter will be referred as deceased, was working as driver on lorry bearing registration No. TS-08-UB-9279 under the employment of 1st opposite party i.e., respondent No.4 herein. On 28.09.2018, while he was on duty on the said lorry there was an accident which resulted injuries and subsequently he died, thereby the respondents 1 to 3 have claimed that the deceased was a driver and he along with cleaner of the said lorry was proceeding towards Kandukur and when they reached Tukkuguda, the cleaner by name Kumar took the driving seat and after they crossed Maheswaram X roads, the said Kumar lost control over the vehicle and dashed one tanker from behind. Therefore, the deceased received injurious and he was shifted to Osmania General Hospital for treatment, but he died on the next day.

3. Therefore, the respondents 1 to 3 sought for compensation @ Rs.7,50,000/-. The 4th respondent herein i.e., 1st opposite party did not appear before the trial Court and he was set exparte. But, the appellant herein appeared before the trial Court and filed counter disputing all the material averments.

4. The appellants herein have denied all the averments made in the petition filed by the respondents/claimants including the salary of the deceased. The appellant has claimed that the deceased was not having a valid driving license. The respondents have not issued any notice to the appellant about the accident, and also claimed that the compensation amount claimed by the respondents is highly excessive and it is not in accordance with the schedules of Employees Act and sought for dismissal of the petition.

5. During enquiry, the wife of the deceased has been examined as AW1 and one Satyanarayana has been examined as AW2. The respondents/claimants have

marked Ex.A1to A9 and Ex.X1 was marked though AW.2.

The appellant herein examined its Administrative Officer as RW1 and marked Ex. B1 to B5.

6. The present appeal has been filed on the following grounds:

The learned Commissioner failed to appreciate the pleadings and evidence wherein it is clearly stated that at the time of accident the cleaner was driving vehicle. The police, after due investigation filed charge sheet against the cleaner for offence under Section 304-A, 338 Indian Penal Code and Section 188 of Motor Vehicle Act. At the time of accident the deceased was not on the steering, as such it cannot be said that the alleged death of deceased was occurred during the course of employment. But, the learned commissioner failed to appreciate the fact and came to a wrong conclusion and awarded compensation. The appellant has claimed that the learned Commissioner ought to have seen that respondent Nos. 1 to 3 failed to prove the employee and employer relationship between the deceased and owner of the vehicle. The respondents could

not produce any evidence i.e., trip sheet, wage register, pay slips etc., to show that the deceased was under the employment of respondent No.4/ 1st opposite party.

7. The appellant claimed that the learned Commissioner ought to have seen throughout the entire proceedings that the respondents have stated that the deceased used to work as driver on the above said lorry but they did not produce any evidence in order to prove their contention. They have also claimed that the owner of the vehicle has committed breach of the terms of policy. The cleaner who was driving at the time of accident was not having driving license. Therefore, it amounts to violation of the policy. On that ground the appellant need not pay any compensation and not liable to indemnify owner. Therefore, the appellant sought for setting aside the order passed by the trial court.

8. In view of the above claim, the point that arose for consideration is :

Whether the learned Commissioner committed any wrong by allowing the petition filed by respondents and that whether the order is liable to be set aside?

9. **POINT**

The main ground on which the present appeal is filed about the driving of lorry by the cleaner and at the time of accident the actual driver who died in the accident was not on the wheel of the vehicle.

10. Learned counsel for the appellant has argued that as per the entire record including the police report, it clearly show that at the time of accident the cleaner by name Kumar was driving the vehicle. He had no valid license. He lost control over the vehicle and caused the accident. Therefore, since the vehicle was allowed to be driven by an unauthorized driver it amounts to breach of policy conditions and he has argued that since the driver was not on the wheel, the death may not be considered as death during the employment. Therefore, the counsel sought for setting aside the order of the trial Court.

11. On the other hand, learned counsel for the respondent/claimant has argued that the driver was on the

employment of the 1st opposite party, there is no dispute by respondent No.4 about such employment. Therefore, it cannot be said that the 1st opposite party allowed an unauthorized person to drive the vehicle. There is evidence before the Court to believe that at the time of accident both the driver and cleaner were on the duty entrusted by the owner. Therefore simply because the driver was taking rest while continuing the journey it cannot be said that, the death was not during the course of employment. Thereby, the award passed by the trial Court cannot be set aside.

12. The learned counsel further submitted that the Commissioner has considered all the oral arguments apart from considering the evidence placed before him and came to a correct conclusion thereby there is no necessity to interfere with the award and prayed for dismissal of the appeal.

13. In support of his contention the counsel for the respondent placed reliance on two judgments i.e., judgment between **S.Janardhan Ranagaiah vs**

Janmindari Rama Devi and others¹ and another judgment between **Sohan Lal Passi vs P.Sesh Reddy and others²**.

14. As rightly argued by the counsel for the respondent the employment of the deceased on the lorry owned by 4th respondent/1st opposite party is not in dispute. The evidence of Aw1 coupled with the copy of FIR and other record clearly shows that on the date of accident the deceased/driver was on duty on the lorry of the 4th respondent and he was discharging such duty thereby, even though at the time of accident the driver was not on wheel it cannot be said that he was not discharging his duty and that the death was not during the course of employment.

15. In the above referred judgment referred supra the High Court of combined Andhra Pradesh State observed that *“when the deceased who was appointed as the driver of the lorry by the owner, was having a valid driving license*

¹ 2004 4 ALD 105

² AIR 1996 SCC 2627

and when the deceased without the knowledge of the owner had entrusted the lorry to cleaner who is not authorized by appellant to drive the vehicle, the insurance company cannot escape its liability.” Whereas in the other judgment in Sohan Lal Passi vs P.Sesh Reddy and others’ case, the Hon’ble Apex Court was pleased to observe that *“when the owner of the vehicle authorized a driver with a valid license to drive his vehicle, if the driver allowed cleaner who was also employee of same owner to drive the vehicle though he had no driving license the owner cannot escape the liability so far as third persons are concerned on the ground that he had not authorized particular manner in which act was done.”* In the same judgment the Hon’ble Apex Court was pleased to observe that *“the insurance company cannot escape the liability to III party on the ground of contravention of condition in policy, even though the vehicle was driven by an unauthorized person.*

16. In this case, it is very clear from the record that the deceased and cleaner Kumar were appointed by the 4th respondent/1st opposite party. The deceased was having a

valid driving license. The record further indicate that just before the accident the cleaner who was present in the vehicle took the steering wheel and he was driving the vehicle which may not be within the knowledge and consent of the owner. Therefore, even though the accident occurred when the cleaner was driving the vehicle, the owner as well as the insurance company cannot escape the liability of payment of compensation. The facts of the present case are aptly covered by the above the referred judgments. Therefore, the Commissioner has passed an award after considering all the aspects and there is no necessity to interfere with the order of the lower Court and the appeal is liable to be dismissed.

17. In the result, appeal is dismissed.

18. As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

JUSTICE SAMBASIVA RAO NAIDU

Date: 02.12.2022
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