THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL MISCELLANEOUS APPEAL NO.589 OF 2008

JUDGMENT:

United India Insurance Company Limited/the appellant/opposite party No.3 has filed this Civil Miscellaneous Appeal assailing the order dated 09.09.2005 in W.C.No.14 of 2003 before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Mahabubnagar.

2. W.C.No.14 of 2003 was filed by Smt.Pathukula Chennamma, and two others claiming compensation under the provisions of Workmen's Compensation Act, 1923 (hereinafter called as the 'Act') for the death of late P.Nagaiah, S/o.P.Kondaiah (hereinafter called as 'deceased'), who died in an accident as labourer on tractor-trailer bearing Nos.AP 22 T 6267 and AP 22 T 6268 belonged to opposite party Nos.1 and 2 and against the opposite party No.3, who is the insurance company. The Court below has allowed W.C.No.14 of 2003 holding that the opposite party Nos.2 and 3 are jointly and severally liable to pay the compensation to the dependents of the

deceased workman, who died due to injuries sustained by him in the accident that occurred on 24.04.2002, which arose out of and in the course of his employment as a cleaner on tractor-trailer bearing Nos.AP 22 T 6267 and AP 22 T 6268 in the employment of 2nd opposite party. The compensation amount of Rs.1,64,218/- together with the Stamp Fee of Rs.330/- and Advocate Fee of Rs.500/-, totalling an amount of Rs.1,65,048/- is to be paid by the 2nd and 3rd opposite parties to the dependents of the deceased workman and directed to deposit such an amount by way of demand draft drawn on any nationalized bank in favour of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Mahabubnagar within thirty days from the date of receipt of the order. Feeling aggrieved by the said order in W.C.No.14 of 2003 the appellant – third opposite party insurance company has filed the present appeal on the following grounds:

(a) The Commissioner is not correct in fixing the liability on the appellant when there is no coverage of risk to the labourer in the policy and that as per FIR – Ex.A1 the relationship between the deceased and opposite party No.1 is master and servant.

(b) The Commissioner is not correct in construing that the deceased is an employee of opposite party No.2 in the absence of any proof and he has exercised the powers, which are not vested in him.

3. Heard learned counsel on both sides. The submissions made on either side have received due consideration of this Court.

4. Learned counsel for the appellant / insurance company would submit that basing on the insurance policy and principles laid in **Swaranjit Singh's** case the Court below has directed the insurance company for payment of the amount and in-fact as per the insurance policy, there is no premium paid towards labourer and the order impugned is liable to be set aside on that ground alone.

5. Per contra, learned counsel for the respondent / applicant would submit that the deceased workman died in the course of employment and the insurance policy is

contained third party coverage, premium was paid to that effect and the Tribunal has correctly appreciated the facts and applied the principles laid in **National Insurance Company Limited Vs. Prembai Patel and others**[1] and that no extra premium is required to be paid by the owner in case of death of driver.

6. In the light of the rival contentions and material available on record, the following points would arise for consideration:

(i) Whether Ex.B1 insurance policy covers the claim made by the dependents of the driver and no extra premium is required to be paid by the owner of the vehicle?

(ii) Whether the order impugned is sustained?

7. For the sake of convenience, both the points are answered together as under:

Point Nos.(i) and (ii):

8. The case of the applicants is that the deceased workman late P.Nagaiah, worked as labourer in the employment of 1st and 2nd opposite parties on the tractor-trailer bearing Nos.AP 22 T 6267 and AP 22 T 6268, met

[1] AIR 2005 Supreme Court 2337

with an accident on 24.04.2001, sustained injuries and died on the spot. The deceased was employed by the owner on the insured tractor, stated above. The applicants have claimed that the appellant No.3 opposite party is the insurer of the vehicle and accordingly, they have made a claim against the opposite party Nos.1 to 3.

9. During enquiry, on behalf of applicants, the widow of the deceased is examined as AW1 and one Balaiah, co-worker of the deceased workman as AW2. Whereas, on behalf of opposite party No.2, she got examined herself as RW1 and that on behalf of opposite party No.3 insurance company their Branch Manager is examined as RW2. On behalf of applicants, Exs.A1 to A10 documents are marked and on behalf of second opposite party, Exs.R1 to R3 documents are marked and on behalf of insurance company Ex.B1 insurance policy is marked.

10. The trial Court, on careful appreciation of oral and documentary evidence, indicated above, has answered all the points in favour of the claimants and held that 2nd and 3rd opposite parties are jointly and severally liable to

pay the compensation to the dependents of the deceased workman, who died due to the injuries received in the accident, which arose out of and in the course of employment and that the deceased was working as a cleaner on the insured tractor, further he was in the employment of opposite party No.2.

11. The widow of deceased workman, who is examined as AW1 has reiterated the averments of the petition in her evidence in chief-examination. In the cross-examination, she has denied that her husband was not working under the opposite party No.1 but he was working under opposite party No.2 and explained that both the opposite parties 1 and 2 are relatives. She explained that she has not filed any wage proof and denied the suggestion that her husband was only working under opposite party No.1 and that only to get compensation she is deposing false stating that her husband was working under the 2nd opposite party.

12. AW2 is co-labourer, who was working along with the deceased at the time of accident. In his evidence,

this witness has stated that the deceased was his co-labourer and both of them worked as labourers on the tractor of second opposite party. As an eye witness to the occurrence of accident, he narrated the incident that occurred on 24.04.2001 stating that while they were going to unload the manure at the agricultural land of second opposite party, on the way, the accident occurred. Though AWs.1 and 2 were cross-examined at length on behalf of insurance company, their evidence remained consistent and nothing worth mentioning is elicited to disbelieve that the deceased workman was not employed by the opposite party or that AW2 is a planted witness.

13. Smt.B.Yadamma, the second opposite party herself examined as RW1. In her evidence, Exs.R1 to R3 documents were marked. She has stated that if the claimants are entitled for any compensation, the same is liable to be paid by the insurance company third opposite party and accordingly, she requested for dismissal of the application against her. In the cross-examination, this witness denied the suggestion that the tractor was engaged

for marriage purpose and that the deceased workman was not her employee.

14. RW2 is the Branch Manager of third opposite party, the appellant herein, it is deposed by him that the said vehicle tractor-trailer bearing Nos.AP 22 T 6267 and AP 22 T 6268 is insured with their insurance company, Ex.B1 is insurance policy. However, the premium was not collected to cover the risk of labourers through Ex.B1. He further stated that the deceased was not employed on the insured vehicle and that deceased was employed by first opposite party. Be it stated that both AWs.1 and 2 have consistently testified that the deceased workman was employed by the 2nd opposite party and this evidence also gains support from the evidence of RW1. This evidence is sufficient to hold that the deceased was employed by the second opposite party and he was not employed by the first opposite party.

15. As per the oral evidence of RW2, the premium was collected to cover the risk of third party, and explained that he is not aware as to who is the third party but except

the driver and the owner all others are third parties, he has not filed the terms and conditions of the insurance policy. He admitted that Section 11 of the IMT Act is marked as Ex.A10.

16. Thus, as per the oral and documentary evidence, available on record, the deceased workman was employed on the tractor belonging to the 2nd opposite party in the employment of first opposite party. Therefore, the second opposite party, who is the owner of the insured tractor is the employer and the first opposite party is not the employer of the deceased workman. The trial Court, accordingly, dismissed the case against the first opposite party. The third opposite party relied on the insurance policy Ex.B1 stating that the premium has not been collected to cover the risk of labourers / workers on the insured vehicle and that the insurance company is not liable to pay compensation. RW2 has explained that insurance policy is subject to Section 11 of the Act, which is marked as Ex.A10, which clearly indicates that insurance company is liable to indemnify the insured for the death or bodily injures to any person caused by or

arising out of the use of vehicle including loading and unloading. The trial Court, while appreciating the oral and documentary evidence, relied on the principles laid by the Hon'ble Apex Court in **National Insurance Company Limited Vs. Prembai Patel and others** (supra).

17. Relevant paragraph No.26 of the said judgment of the trial Court is extracted for the sake of convenience as under:

> "Further the learned counsel for the applicants also relied upon the decision reported in II (2005) ACC 553 (D.B.). In the case 1996 (6) ALD 356 (D.B.) dealt with the liabilities of the insurance companies, arising out of Chapter 10 and 11 of the M.V.Act. The Hon'ble Court observed that the benefit of the provisions of this Chapter would also be available in cases where compensation is claimed in respect of a motor accident under any other law, for example W.C.Act 1923. In the case of **National Insurance Company Limited - Appellant Vs. Prembai Patel and others – Respondents**, reported in **AIR 2005 Supreme Court 2337,** it is held that

> "Motor Vehicles Act (59 of 1988), Ss.147(1), proviso 49 – Workmen's Compensation Act (8 of 1923), S.3 – Accident – Liability of Insurance Company – Limit – Death of driver of vehicle in course of employment – Policy taken by owner of the vehicle as for 'Act Liability' – No extra premium, was paid by owner – Liability of Insurance Company qua employees of owner would not be unlimited but would be limited to that arising under W.C.Act."

18. Be it stated that, RW2 has accepted that the premium has been collected to cover the risk of third parties and also admitted that Ex.A10 applies to insurance policy. Therefore, relying on the oral and documentary evidence and the principles laid in the above decision, Court below rightly held that the risk of deceased labourer is covered under the insurance policy and the insurance company cannot escape from their liability to indemnify the insurer second opposite party. As such, the second opposite party, who is the owner of the vehicle insured and the third opposite party who is the insurer of the vehicle are jointly and severally liable to pay the compensation to the dependents of the deceased workman and that the

third opposite party insurance company is bound to indemnify the insured. Both the points are accordingly answered.

19. In the result, this Civil Miscellaneous Appeal is dismissed confirming the order dated 09.09.2005 in W.C.No.14 of 2003 before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Mahabubnagar. The applicants / respondent Nos.1 to 4 / dependents of the deceased are entitled to withdraw the entire compensation amount deposited by the appellant / insurance company before the Tribunal with interest.

20. In the circumstances of the case, there shall be no order as to the costs. Miscellaneous applications, if any pending, shall stands closed.

A.VENKATESWHARA REDDY, J

26-10-2022
Abb