

HIGH COURT FOR THE STATE OF TELANGANA

THURSDAY, THE FOURTH DAY OF AUGUST
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL MISCELLANEOUS APPEAL NO: 301 OF 2022

Appeal Under Section 30 of Employees Compensation Act, 1923 against the Order in W.C.No.9 of 2014 dated 30-5-2015 on the file of the Commissioner for Employees Compensation and Assistant Commissioner of Labour (FAC) at Mahabubnagar.

Between:

L and T General Insurance Company, Ltd, rep. by its Divisional Manager, Legal Department, D.No. 601 and 602, IV Floor, Trade Centre, Kuria Complex, Bandra (East), Mumbai, Maharashtra State.

...APPELLANT/OPPOSITE PARTY No.2

AND

1. Kolagoni Bhagyamma, W/o. late Sri K. Veeraiah, age. 26 years,
2. Kolagoni Nikitha, D/o. late Sri K. Veeraiah, age. 8 years (Minor).
3. Kolagoni Shiva, S/o. late Sri K. Veeraiah, age. 5 years, (Minor).
4. Kolagoni Papamma, W/o. late Sri K. Balaiah,

(Respondent Nos. 2 and 3 being minors are rep. by their mother and natural guardian, the respondent No.1 herein)

All are R/o. Mudigonda village, Devarakonda Mandal, presently residing at Jadcherla proper, Mahabubnagar District.

...RESPONDENTS/APPLICANTS

5. Venkadari Balaji, S/o. not known, age. Major, Occ. Business, R/o. C/o. K.Madhava Rao, R/o. H.No. 22-3-45/1, Nacharamma Colony, Kandukur, Prakasham District.

...RESPONDENT/OPPOSITE PARTY No.1

Counsel for the Appellant: SRI T. MAHENDER RAO, SC FOR INSURANCE CO. LTD.

Counsel for the Respondent Nos.1 to 4: SRI K. V. RAGHUVeer

The Court delivered the following: JUDGMENT

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.M.A.NO.301 of 2022

JUDGMENT:

The appellant herein is the second opposite party in W.C.No.9 of 2014 on the file of Commissioner for Employees Compensation Cum Assistant Commissioner of Labour, Mahabubnagar and respondents No.1 to 4 herein are petitioners/applicants in the said petition whereas, the 5th respondent herein was shown as opposite party No.1. W.C.No.9 of 2014 has been filed by the respondents No.1 to 4 herein for compensation under the provisions of Employees Compensation Act, 1923 on the ground of death of one Veeraiah, who herein after will be referred as deceased, in a road accident.

2. According to the averments made in the case vide W.C.No.9 of 2014, Respondents No.1 to 4 herein have claimed that first respondent is wife, Respondents No.2 and 3 are children and Respondent No.4 is mother of deceased, who was working as driver on a lorry bearing No.AP 27X 4636 belongs to O.P.1 (opposite party 1). They have claimed that on 09-12-2011, the deceased was on duty as driver of the above said lorry and as per the instructions of the employer, he started from Miryalaguda with

a rice load and proceeding towards Mahabubnagar and at about 11.00 p.m., while he reached Jadcherla, he received information that one of his relatives died at his native place thereby, he parked the lorry near the petrol pump at Jadcherla, and while he was proceeding on the road towards a MGB Motor shop, an unknown vehicle which was proceeding from Hyderabad which was driven in a high speed and negligent manner dashed him thereby, he suffered bleeding injuries. He was shifted to Government Head Quarters Hospital, Mahabubnagar, but he succumbed to the injuries. A complaint was filed before police, Jadcherla. Respondents No.1 to 4 have claimed that deceased used to get Rs.8,000/- per month towards salary apart from batha Rs.50/- per day from O.P.1. The deceased was aged about 28 years, thereby, they claimed compensation of Rs.8,00,000/- from O.P.1 and O.P.2.

3. Both the opposite parties appeared before the Tribunal and filed their respective counters. O.P.1 filed counter, admitted the relationship of the respondents No.1 to 4 herein with the deceased, admitted the employment of the deceased as driver on his lorry, admitted his death while he was in the employment and also admitted the payment of salary but claimed that he need not pay any compensation as he obtained insurance policy from the second opposite party.

4. The second opposite party filed a separate counter denying all the material averments including the relationship between the respondents herein with the deceased, employment with the first opposite party and further pleaded that according to Section 134 (c) of Motor Vehicles Act, "it is mandatory duty for the insured i.e., O.P.1 to furnish the particulars of insurance policy, date, time and accident etc., but no such information was given to O.P.2 i.e., appellants herein and further pleaded that there was no such information from the concerned police. According to Section 158 (b) of Motor Vehicles Act, it is mandatory duty of the police to inform the accident to the insurance company and on all these grounds, the appellant sought for dismissal of the application.

5. Respondent No.1/applicant No.1 was examined as AW.1, she has marked Exs.A1 to A5, apart from her evidence, the respondents/applicants have examined two more witnesses as AW.2 and AW.3. Whereas, the Senior Assistant from RTA office, Suryapet has been examined as RW.1. The learned Commissioner having considered oral and documentary evidence placed before him allowed the application and awarded an amount of Rs.6,42,033/- as compensation with interest @ 12% per annum from the date of accident.

6. Aggrieved by the above said judgment, the appellant/O.P.2 filed the present appeal and in the grounds of appeal, it has averred that the learned Commissioner ought to have saddled the liability to pay compensation only on the injured/respondent No.5, since the appellant herein discharged its burden by examining RW.1 and proving Exs.B1 and B2 which established the deceased was not holding any driving license at the time of accident. The owner of the vehicle i.e., Respondent No.4/O.P.1 committed the breach of terms and conditions of insurance policy, since he allowed a person without a valid license to drive the vehicle, the insurance company is not liable to pay any compensation. The appellant further claimed that when insurance company is able to prove by way of oral and documentary evidence about the violations of the policy conditions, the insurance company shall not be made liable to pay any compensation thereby, he sought for setting aside the order and for dismissal of the petition against the appellant.

7. According to the grounds raised in the appeal, it is the case of appellant that by virtue of Section 3 of Motor Vehicles Act, no person shall drive a motor vehicle unless he holds a valid and effective driving license. Since there is evidence before the Court below through RW.1, Exs.B1 and B2 to the effect that the driver of

the vehicle has no valid license, it amounts to violation of the policy conditions thereby, the petition ought to have been dismissed against the appellant herein.

8. In support of this claim, the learned counsel placed reliance on judgment between "**Sardari & others Vs. Susheel Kumar & others**"¹ .

9. I have heard the learned counsel for the appellant. The learned counsel has submitted that the appellant/OP.2 was able to place before the Commissioner that the driver had no license inspite of it the liability is fastened against the appellant herein. Therefore, the award is liable to be set aside against the appellant herein

10. Now the point for consideration is :

Whether the Court below committed an error in fixing the liability against the appellant, thereby, the same is liable to be set aside ?

11. There is no dispute about the accident, employment of the deceased on the referred lorry, about the payment of wages by opposite party 1 and also about the death of the deceased in an accident while he was under the employment of Respondent No.5/OP.1. The only dispute arise in the present appeal is that the driver/deceased was not holding a valid license. In support of this

¹ 2008 ACJ 1307

contention, the appellant relied on the evidence of RW.1 and Exs.B1 and B2.

12. As could be seen from the order of the learned Commissioner, it shows that RW.1 i.e., an employee from the RTA Suryapet, their records did not disclose any license in favour of the deceased. In the cross-examination, RW.1 has admitted that the deceased can obtain a license from any office of Road Transport Authority on the basis of Identity proof from any place all over the country, and he was not able to say whether this person obtained any such license. Therefore, the evidence of RW.1 may show that the deceased did not obtain license from their office. That does not mean that the deceased was precluded from obtaining license from other office and he could not have obtained license from the other Road Transport Office Authority. The learned Commissioner has considered this aspect in the award. The learned Commissioner relied on various judgments. In one of the judgments between "**United India Insurance Company Limited Vs. Annakutty and another**"², the Division Bench of Kerala High Court was pleased to observe that "*insistence of a driving license will have a bearing in respect of any injury not resulting in death where there is a valid insurance policy, the liability will be on the*

² 2005 (III) LLJ. 824

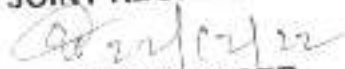
insurer. Therefore, absence of driving license cannot be a reason to deny the compensation". Therefore, since there is an opportunity for the driver of a vehicle to obtain any license from any place of country simply because he did not obtain such license from a particular place as deposed by RW.1 it does not mean, he had no such driving license and on that ground, insurance company cannot escape its liability. Therefore, the learned Commissioner rightly awarded compensation against both the opposite parties. thereby, the present appeal has no merits and is liable to be dismissed.

13. In the result, the appeal is dismissed.

Consequently, Miscellaneous applications if any, are closed.

No costs.

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SD/-B.S.CHIRANJEEVI
JOINT REGISTRAR

SECTION OFFICER

- To,
1. The Commissioner for Employees Compensation and Assistant Commissioner of Labour (FAC) at Mahabubnagar. (with record)
 2. One CC to Sri T. Mahender Rao, Advocate [OPUC]
 3. One CC to Sri K. V. Raghuvier, Advocate [OPUC]
 4. Two CD Copies
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HIGH COURT

DATED: 04/08/2022

JUDGMENT

CMA.No.301 of 2022



DISMISSING THE CMA
WITHOUT COSTS

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PM
12/1/22