
(2009) 11 AP CK 0067
In the Andhra Pradesh High Court
Case No : CMA No. 541 of 2008

Bajaj Allianz General Insurance Co. Ltd.	APPELLANT
Vs	
D. Vijaya and Others	RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Citation : (2013) 3 ALD 725 : (2013) 4 ALT 238

Hon'ble Judges : G.V. Seethapathy, J

Bench : Single Bench

Advocate : Rama Chandra Reddy Gadi, for the Appellant; Kotagiri Sreedhar, Counsel for the Respondent Nos. 1 to 5, for the Respondent

Final Decision : Dismissed

Judgement

G.V. Seethapathy, J.—This appeal is directed against the order dated 25.3.2008 in WC No. 46 of 2007 on the file of the Commissioner for Workmen's Compensation Act and Assistant Commissioner of Labour, Circle-I, at Hyderabad, wherein the claim of the respondents 1 to 5 herein was allowed in part awarding compensation of Rs. 3,95,294/-. Heard the learned Counsel for the appellant and the learned Counsel for the respondents 1 to 5. Perused the record.

2. The respondents 1 to 5 herein filed claim application seeking compensation of Rs. 5,00,000/- on account of death of D. Srinivas @ Srinu, who died in a motor vehicle accident that occurred on 6.1.2007. The first claimant is the wife, claimants 2 and 3 are children and claimants 4 and 5 are the parents of the deceased. According to them, the deceased was employed by the 6th respondent herein as a driver in the auto rickshaw bearing No. AP 10 V 4958, which was insured with the appellant-insurer and that the deceased was earning wages of Rs. 4500/- per month and that on that day at about 7.25 a.m., while the deceased kept the auto in the stand near Sangeeth Bus Stop and crossing the road to attend calls of nature, one unknown vehicle hit the deceased, as a result of which he sustained severe injuries and subsequently, died in Gandhi Hospital, while undergoing treatment.

3. The 6th respondent herein employer remained ex parte before the learned Commissioner. The appellant herein-insurer filed a counter opposing the claim and denying their liability and further denying that the 6th respondent employed the deceased and that the deceased died in the course of employment.

4. During the enquiry, the first claimant was examined as AW1 and marked Exs. A1 to A6. RW1 Assistant Manager of the appellant was examined and Ex. B1 copy of the policy was marked on behalf of the appellant.

5. On a consideration of the evidence available on record, the learned Commissioner held that the deceased died due to the injuries sustained in the accident that occurred on 6.1.2007 in the course of employment with 6th respondent herein. The learned Commissioner further held that the 6th respondent herein-owner of the auto and appellant-insurer are jointly and severally liable to pay the compensation of Rs. 3,95,294/-. Aggrieved by the same, the insurer filed the present appeal.

6. The learned Counsel for the appellant would mainly contend that at the time of the accident, the deceased was not having valid driving licence and secondly, that he was not using the vehicle at the time of accident, but was crossing the road and therefore, the appellant-insurer is not liable to pay the compensation.

7. According to the claimants, the 6th respondent employed the deceased. The 6th respondent did not contest the matter. It is not denied by the 6th respondent that he employed the deceased. The appellant also did not adduce any evidence to show that the 6th respondent did not employ the deceased. The crime record would show that the deceased was the driver of the auto. AW1 wife of the deceased also testified that 6th respondent employed the deceased as driver in the auto. The testimony of AW1 remains unchallenged. Under those circumstances, the learned Commissioner has rightly held that the deceased died during the course of employment as driver of the auto under 6th respondent. The contention of the learned Counsel for the appellant that because at the time of accident, the deceased was not actually plying the auto but was crossing the road and therefore, it cannot be said that the accident arose during the course of employment, is not tenable. It is not as though the deceased was completely disassociated with plying of the auto at the time of the accident. The evidence on record would show that the deceased was very much on duty on that day in the auto and he has parked the same at the auto stand and while crossing the road for the purpose of answering calls of nature, he was hit by an unknown vehicle, it cannot, therefore, be said that the deceased was not on duty at the time of the accident and in fact, the accident occurred while the deceased was on duty as driver of the auto. That he was going for answering calls of nature leaving the auto for the said purpose, does not alter the position nor effect any change in the relationship of employer and employee.

8. The next contention of the learned Counsel for the appellant is that the deceased was not having valid driving licence. AW1 in her evidence stated that

the deceased was having a valid driving licence, but the same was misplaced at the place of accident. It is quite possible that the driving licence, which the deceased was supposed to carry on his person, got misplaced in the melee that followed the accident. The appellant has not placed any material to show that the deceased was not having a valid driving licence. RW1 testified that the policy was in force and the insurer has collected premium to cover the risk of paid driver. The auto was having a valid route permit and it was admittedly plying within the permitted area. The accident did not occur while the deceased was actually plying the auto, but occurred when he was crossing the road to answer calls of nature. It is not the case where the deceased was plying the auto without having driving licence at the moment accident occurred. The owner of the vehicle did not contest the matter. The appellant did not adduce any evidence to show that the owner of the vehicle has entrusted the vehicle to a person having no valid driving licence. There is nothing on record to show that there was any willful breach of conditions of the policy by the insurer by entrusting the vehicle to a person having no valid driving licence. The burden lies on the insurer to prove that there has been violation of terms and conditions of the policy, which enables the insurer to avoid liability. Simply because the driving licence could not be produced by the claimants, they cannot be denied the fruits of beneficial legislation, especially, when the insurer failed to discharge the burden of establishing that there was violation of terms and conditions of the policy on the part of the insured by entrusting the vehicle to a person having no valid driving licence. The Commissioner has, therefore, rightly held that the appellant/insurer is liable to reimburse the amount of compensation, as the policy was in force on the date of the accident.

9. Regarding the quantum of compensation, the learned Commissioner has taken minimum wages payable to a driver as per G.O. Ms. No. 83 dated 26.11.2006 at Rs. 3435/- and VDA payable is Rs. 183.75, making up total of Rs. 3,618.75. As borne out by the evidence on record, the deceased was aged 24 years. Applying the suitable multiplier factor at 218.47, the learned Commissioner arrived the compensation at Rs. 3,95,294/-. Having regard to facts and circumstances of the case, the amount awarded by the learned Commissioner fastening joint and several liability on the insurer for payment of the said compensation does not call for any interference. In the result, the civil miscellaneous appeal is dismissed. No order as to costs.