
(2008) 12 AP CK 0079
In the Andhra Pradesh High Court
Case No : C.M.A. No. 1568 of 2008

National Insurance Co. Ltd.	Vs	APPELLANT
Rajala Lakshmi (Died) and Others		RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 5
Workmens Compensation Act, 1923 — Section 3, 4, 4A, 4A(3)

Citation : (2009) ACJ 58

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : S. Agastya Sharma, for the Appellant; K.L.N. Rao, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This appeal has been filed by the insurance company against the order dated 10.10.2006 in W.C. Case No. 41 of 2004 on the file of the Assistant Commissioner of Labour, Circle I, Visakhapatnam.

2. The respondent No. 1 is the wife of the deceased Simhachalam. She filed the said application under Workmen's Compensation Act claiming compensation of Rs. 2,07,980. The deceased Simhachalam worked as driver since two years on the tractors bearing Nos. ABP 5910 and ABP 5911 belonging to the owner of the tractor and trailer, opposite party No. 1. The vehicles were insured with the appellant and the policy is valid from 24.3.1998 to 23.3.1999. On 10.12.1998 at about 8 p.m., on the instructions of the owner, deceased took the tractor and trailer for ploughing the land of one Vijaya Narayana Raju and when he was driving the same, the tractor and trailer suddenly turned turtle and the deceased fell down and died on the spot, therefore, the wife of the deceased filed the application claiming compensation against the owner and the insurance company.

3. The opposite party No. 1, being the owner, contended that he is the owner of the vehicles and opposite party No. 2 is the insurer. The policy was valid as on

the date of alleged accident. He denied employment of the deceased and the accident and requested to dismiss the application.

4. The insurance company, opposite party No. 2, filed a counter by denying the employer and employee relationship and the accident and further contended that unless it is established that there was valid insurance coverage as on the date of accident, the insurance company is not liable. The claimant has to prove that the accident occurred during the course of employment and she is the dependant of the deceased. Unless the claimant proves that the accident vehicle has got a valid permit and fitness certificate, the insurance company is not liable to pay any compensation.

5. The opposite party No. 1 being the owner got examined as RW 1. During the course of examination, he stated that the deceased died during the course of employment under him and he used to pay Rs. 2,000 for all the services and that the deceased possessed driving licence on the date of accident. On behalf of opposite party No. 2, RW 2 was examined, who stated that the applicant failed to establish that the deceased was possessing driving licence as on the date of accident. During the course of cross-examination, he stated that the vehicle of opposite party No. 1 was having a valid insurance policy and a copy of it was marked as Exh. R1. He further stated that he has no documentary proof to show that the deceased did not work as driver under opposite party No. 1 and did not possess driving licence. He further submitted that the insurance policy was issued to the vehicle for carrying the goods but at the time of accident, vehicle was used for the purpose of agricultural operations, which is in violation of the terms and conditions of the policy, therefore, the insurance company is not liable to indemnify the loss of the owner of the vehicle.

6. The Junior Assistant in the R.T.A. Office, Kakinada, RW 3, deposed that the vehicle was having valid permit covered by Exh. C1. He denied a suggestion that as per the permit the tractor can also be used for agricultural operations.

7. On the basis of the above evidence, the Assistant Commissioner of Labour came to a conclusion that the applicant proved that the deceased died during the course of employment and she is entitled to receive the compensation making the opposite party Nos. 1 and 2 jointly and severally liable to pay the same. Being aggrieved by the order of the Assistant Commissioner making the insurance company liable to pay the compensation, the insurance company preferred the present appeal.

8. The appellant contended that the deceased did not have valid driving licence as on the date of accident; that the owner of the vehicle violated the terms and conditions of the policy by using the vehicle for the purpose of agricultural operations though the policy was issued only for the purpose of carrying goods and that there is no sufficient evidence to show that the insurance company is liable to pay the compensation, therefore, the order of the Assistant Commissioner is liable to be set aside to the extent of the liability fixed on the

insurance company.

9. The claimant filed F.I.R., Exh. A1, to show that the deceased died in the accident. M.V. Inspector's report, Exh. A2; post-mortem report, Exh. A3; and inquest report, Exh. A8, disclose that the deceased had died while driving the tractor when it turned turtle suddenly while going on the road. From the documentary evidence placed by the applicant, it is evident that the deceased died while driving the tractor. The applicant asserted that the deceased was having valid driving licence as on the date of accident, which was supported by the opposite party No. 1. The appellant did not place any material to show that the driver was not having any valid licence as on the date of the accident, therefore, the Assistant Commissioner rightly came to a conclusion that the accident occurred during the course of employment and as the insurance company failed to prove that there was no valid licence as on the date of accident, it shall be deemed that there was valid driving licence as on the date of accident.

10. Mr. S. Agastya Sharma, the learned Counsel for the appellant submitted that the Workmen's Compensation Act does not provide for joint and several liability of the insurance company along with the owner. In the event of the applicant establishing that the accident occurred during the course of employment, the owner has to first pay the compensation to the applicant and then recover the amount from the insurance company. But, in the present case, the liability is fixed on the insurance company along with the owner, which is against the provisions of the Workmen's Compensation Act, therefore, requested to set aside the order of the Assistant Commissioner to the extent of the liability of the insurance company.

11. In Ved Prakash Garg Vs. Premi Devi and others, , the Hon'ble Supreme Court, while considering the provisions of the Motor Vehicles Act and Workmen's Compensation Act, observed:

...when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to insured employer, the claim for compensation payable under the Workmen's Compensation Act, 1923, along with interest thereon, if any, as imposed by the Commissioner under Sections 3 and 4-A(3)(a) of the Workmen's Compensation Act will have to be made good by the insurance company jointly with the insured employer.

...the liability to pay compensation under the Workmen's Compensation Act gets foisted on the employer provided it is shown that the workman concerned suffered from personal injury, fatal or otherwise, by any motor accident arising out of and in the course of his employment. Such an accident is also covered by the statutory coverage contemplated by Section 147 of the Motor Vehicles Act read with the identical provisions under the very contracts of insurance reflected by the policy which would make the insurance company liable to cover all such claims for compensation for which statutory liability is imposed upon the

employer u/s 3 read with Section 4-A of the Workmen's Compensation Act. All these provisions represent a well knit scheme for computing the statutory liability of the employers in cases of such accidents to their workmen.

From the above decision, it is clear that when there is valid insurance coverage as on the date of accident and the accident occurred during the course of employment, the insurance company is liable to indemnify the loss of the owner and to avoid multiplicity of litigation, the court can direct the insurance company to pay the compensation making it liable jointly along with the owner if it is satisfied that there is liability on the insurance company also.

In National Insurance Co. Ltd. Vs. Swaran Singh and Others, , the Supreme Court held as follows (para 77):

...The owner of a motor vehicle in terms of Section 5 of the MV Act has a responsibility to see that no vehicle is driven by a person who does not satisfy the provisions of Section 3 or Section 4 of the Act. In a case, therefore, where the driver of the vehicle admittedly did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand at all, e.g., a case where an accident takes place owing to a mechanical fault or vis major.

There is no dispute about the proposition laid down by the Hon'ble Supreme Court in the above decision. But the decision is not applicable to the facts of this case.

12. In the present case, it is not the contention of the insurance company that the deceased was having a fake driving licence. If that is established, the position would be different. But when it is asserted by the owner as well as the applicant that the driver was having valid driving licence as on the date of accident, it is for the insurance company to prove that there was no valid driving licence. In the event of failure of the insurance company to establish the said fact, it can be safely concluded that the driver was having valid driving licence as on the date of accident and the insurance company can be made liable under the Workmen's Compensation Act as there is evidence to the effect that the deceased was under the employment of the owner of the vehicle as on the date of accident. Though there is a general denial of the allegations in the counter, there was no specific denial that the driver was not at all employed by the owner. In the cross-examination, the owner admitted that the deceased worked under him on a monthly salary of Rs. 2,000. Therefore, the Assistant Commissioner rightly came to a conclusion that accident occurred during the course of

employment and the driver was having valid driving licence as on the date of accident and rightly made the insurance company liable and granted compensation.

13. In the light of the above reasons, I do not find any infirmity in the order passed by the Assistant Commissioner of Labour and there are no grounds to set aside the same.

14. The civil miscellaneous appeal is, accordingly, dismissed by confirming the order of the Assistant Commissioner in all respects. No order as to costs.