
(2005) 09 AP CK 0079

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 979 of 2005

New India Assurance Co. Ltd.

APPELLANT

Vs

R. Anantha Reddy and Others

RESPONDENT

Date of Decision : 28-09-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(3), 158(6), 167, 2(1), 2(44)

Penal Code, 1860 (IPC) — Section 337

Workmens Compensation Act, 1923 — Section 22, 3, 30

Citation : (2006) 1 ACC 396 : (2006) 1 ALD 38 : (2005) 6 ALT 623 : (2006) 1 RCR(Civil) 543

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : Naresh Byrapaneni, for the Appellant; K. Raghuveer Reddy, for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—The short question Involved in all these appeals is, whether policy obtained for tractor-trailer for agricultural purpose covers the risk of labourers when it is used for transporting gravel to the cattle shed of the insured. Hence, they are being disposed of by this common judgment.

2. The New India Assurance Company Limited called in question the legality of the separate orders passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad dt. 20-8-2004 in W.C. case Nos. 512, 511, 509, 514, 510 and 513 of 2003 respectively in allowing the applications filed u/s 22 of Workmen's Compensation Act, 1923.

3. The facts giving rise to the controversy, which are not in dispute, are briefly stated thus: Opposite Party No. 1 (herein after called as "the insured") insured the tractor bearing registration No. AP 25 F 2601 and trailer bearing No. AP 25 F 2602 with the New India Assurance Company Limited, Nizamabad (hereinafter called as "the Insurer") under policy Cover Note No. 45267 valid from 25-6-2002

to 24-6-2003.

4. The first respondent in all these appeals, who are claimants before the Court below, were engaged to loading and unloading gravel for the cattle shed of the insured and while proceeding to load the gravel near Mattaiah Farm, due to rash and negligent driving of the driver of the tractor-trailer, it dashed auto bearing No. AP 25 U 3566 and went off the road and turned turtle. Due to the said impact, the applicants who were travelling in trailer sustained multiple fractures and grievous injuries over their bodies. Immediately, they were shifted to Government Head Quarters Hospital, Nizamabad for treatment. Police registered a case in Cr.No. 107/2003 u/s 337 IPC against the driver of the tractor-trailer. The labourers who are injured in the said accident moved the Commissioner for Workmen's Compensation for compensation.

5. The insured, who is the owner of the tractor-trailer, filed a counter while admitting the accident occurred during the course of employment, pleaded that vehicle was insured with the insurer and it was in force at the time of the accident and the driver who drove the tractor-trailer was having valid driving licence, therefore the insurer is liable to pay compensation.

6. The insurer (Insurance Company) filed counters denying the involvement of the tractor-trailer and injuries received by the applicants by rash and negligent driving of the tractor-trailer, validity of driving licence of the driver of the tractor-trailer and the tractor's roadworthiness. Further, the insured has not reported the accident to the Insurance Company with which the vehicle was insured. Amount of compensation claimed by the applicants is highly excessive and out of all proportions. Since the accident report and its copies have not been furnished as per Section 158(6) of the Motor Vehicles Act, 1988 either by the concerned police or insured, they denied the accident and their liability to pay compensation. If for any reason, the Insurance Company is made liable to pay compensation the same has to be restricted under the Motor Vehicles Act or Workmen's Compensation Act.

7. The learned Counsel for the Insurance Company submitted that the owner while getting his vehicle insured had only paid premium as was required to cover the liability on use of agricultural purpose, that too driver and cleaner but not the other labourers who are not engaged for agricultural purpose and the insured has not paid such premium so as to cover the entire amount of liability qua an employee/labourer, the appellant's liability would be a restricted one and it would not be to satisfy the entire award made in favour of the claimants by the Commissioner and placed reliance on the judgment of this Court in *New India Assurance Company Limited Vs. Sandepudi Mariyamma and Others*, . He further submitted that as no premium is collected covering the risk under condition No. 17 of India Motor Tariff attached to the policy, it does not cover the risk of any other employee and placed reliance on the decision of the Supreme Court in *Ramashray Singh Vs. New India Assurance Co. Ltd. and Others*, . Once the tractor-trailer was insured for agricultural purpose, use of the same for

transporting gravel to the cattle shed cannot be termed as agricultural purpose.

8. The learned Counsel for the respondents-workmen, on the other hand, submitted that in the absence of any evidence let in by the Insurance Company that the additional premium as required has not been paid, it is not open for them to contend that they need not satisfy the award passed by the Commissioner. Once policy covers the driver, cleaner and six labourers, and necessary premium is collected, the insurer is liable to pay compensation so awarded. He further submitted that in the absence of any substantial question of law arising in view of proviso to Section 30 of the Workmen's Compensation Act and in the absence of any pleading and evidence let in by the Insurance Company before the Commissioner that the premium is collected only for the driver and same does not cover the risk of labourers, the insurance company is debarred to question the compensation so awarded and placed reliance on the judgment of the High Court of Orissa in Divisional Manager, National Insurance Co. Ltd. Vs. Rabi Sahoo and Another, . He further submitted that maintaining cattle shed is only an ancillary to agricultural purpose and once the tractor-trailer is used by the insured for transporting gravel to the cattle shed, it is nothing but an agricultural purpose and placed reliance on New India Assurance Company Limited v. Ansuya 1989 ACJ 400 ; Poonam Singh Vs. Kamla and Others, and National Insurance Co. Ltd. Vs. Swaran Singh and Others, .

9. Section 3 of the Workmen's Compensation Act lays down that if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II of the said Act. Section 167 of the Motor Vehicles Act, 1988 lays down that notwithstanding anything contained in the Workmen's Compensation Act, 1923 where the death of, or bodily injury to, any person gives rise to a claim for compensation under the Motor Vehicles Act, 1988 and also under the Workmen's Compensation Act, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. It is evident from the claim petitions filed by the workmen for the injuries sustained by them are in an accident arising out of and in the course of their employment.

10. The questions that fall for consideration in these appeals are:

(1) Whether the appellant-Insurance Company is liable to pay compensation for the injuries sustained by the labourers, in a motor accident, engaged by the insured for transporting gravel to the cattle shed under the policy?

(2) Whether policy under which tractor-trailer was insured covers the risk while it is being used for agricultural purpose only? If so, transportation of gravel can be termed as agricultural purpose or not?

11. In order to answer the above issues, it is necessary to see the cover note and policy issued by the Insurance Company, which are made available to the Court, especially the endorsements made therein. It is not in dispute under the

Miscellaneous Insurance Temporary Cover Note under Ex.B-1, the total premium collected is Rs. 4026/- (Rs. 3834/- is premium and Rs. 192/- is service tax) towards coverage of tractor-trailer including L.L. driver and 6 labourers and it is also mentioned as "agriculture tractor/trailer". Ex.B-2 policy issued is subject to IMT endorsement printed herein/attached hereto Condition Nos. 26, 22, 23, 24, 19, 17 and the policy covers use only under a permit within the meaning of Motor Vehicles Act, 1988 or such a carriage falling under Sub-section (3) of Section 66 of the Motor Vehicles Act. The limit of the amount of the company's liability u/s 11(1) in respect of any one accident as per Motor Vehicles Act, 1988 and company's liability in respect of any one claim or series of claims arising out of one event "unlimited". The premium details mentioned under Ex.B-2 is, for own damage premium Rs. 2256/- and third party premium Rs. 1523/-.

12. Submission of the learned Counsel for the Insurance Company that no premium is collected covering the risk as per condition No. 17 of IMT has been raised first time in this Court and no such plea was taken in the trial Court nor any evidence has been let in to the said effect. Cover note and policy clearly indicates that the vehicle was insured to cover the risk of L. L. driver and six labourers who are engaged and collected premium subject to IMT endorsement attached to policy i.e. 26, including condition No. 17 and insurance policy is issued in accordance with the provisions of Chapter X and IX (sic. XI) of Motor Vehicles Act. In the counter filed by the Insurance Company, it is not asserted that the Insurance Company has not undertaken any liability to the labourers engaged as per the cover note and policy issued except stating that the liability of the company is subject to terms, conditions, exception of the policy and provisions of Motor Vehicles Act and Workmen's Compensation Act and petitioners have to put to strict proof of the same and if any award or compensation awarded to the workmen, the same has to be restricted under the provisions of Motor Vehicles Act and Workmen's Compensation Act. Except filing Exs.B-1 and B-2 copy of insurance policy and cover note, the person connected with issuance of the same has not been examined to substantiate the plea that Insurance Company has not undertaken the liability of labourers engaged except driver and cleaner. In the absence of any pleading or evidence to the said effect, it is not open for the Insurance Company to contend that they are not liable to pay any compensation and no extra premium was paid to cover the risk of labourers. Point No. 1 is accordingly answered in favour of the claimants.

13. The facts about use of the tractor-trailer for transporting gravel to the cattle shed of the insured and sustaining injuries by the labourers are not in dispute. Similarly, the tractor-trailer was registered for the use of agricultural purpose.

14. "Agricultural purpose" has not been defined under the Motor Vehicles Act, 1988 except tractor and trailer. The definitions of them as given in Sub-sections (44) and (46) of Section 2 read as under:

2 (44) "Tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but

excludes a road roller.

2(46) "Trailer" means any vehicle, other than a semi-trailer and a sidecar, drawn or intended to be drawn by a motor vehicle.

Therefore, necessarily, the Court has to fall back upon the general sense in which "agricultural purpose" has been understood in common parlance.

15. "Agriculture" as defined under Black's Law Dictionary is "the Science or art of cultivating the soil, harvesting crops, and raising livestock and also as the science or art of the production of plants and animals useful to man and in varying degrees the preparation of such products for man's use and their disposal". Webster's New International Dictionary describing "Agriculture" as "the art of science of cultivating the ground, including rearing and management of livestock, husbandry, farming etc., and also including in its good sense farming, horticulture, forestry, butter and cheese making etc.," Murray's Oxford Dictionary describes "agriculture" as "the science and art of cultivating the soil, including the allied pursuits of gathering in the crop and rearing livestock, tillage, husbandry, farming in the widest sense". In Corpus Juris Secundum, the term "agriculture" has been understood to mean, art or science of cultivating the ground, especially in fields or large quantities, including the preparation of soil, planting of seeds, the raising and harvesting of crops, and the rearing, feeding and management of livestock, tillage, husbandry and farming. As per Century Dictionary and Anderson's Dictionary of Law, the primary meaning of "agriculture" is the cultivation of the ground, and in its general sense, it is the cultivation of the ground for the purpose of procuring vegetables and fruits for the use of man and beast including gardening or horticulture and the raising or feeding of cattle and other stock.

16. The reliance placed in the case of Ramashray Singh (2 supra) is misplaced to the facts in the present case. In the above cited case, the Supreme Court considered the scope "any person" or "passenger" in Sub-clauses (i) and (ii) of Section 147(1)(b) which do not comprehend Khalasi under the comprehensive policy which covers the risk of 13 passengers and one driver. Similarly, the judgment of this Court in the case of Sandepuri Mariyamma (1 supra) will not help to the Insurance Company since in that case tractor involved in accident used for a purpose other than for agriculture, namely, transportation of Napa slabs, contrary to terms of the insurance policy. Therefore, insurer is not liable to pay compensation to the claimants or to indemnify the owner of the vehicle. Once the policy covers the risk of driver and 6 labourers, which impliedly authorizes or permitted the insured to carry the labourers in the tractor-trailer when the vehicle is used for agricultural operations, Insurance Company has undertaken the liability of the insured in the event of any accident during course of employment.

17. The High Court of Madhya Pradesh in the case of Poonam Singh (5 supra) held that the agricultural purpose would not only mean the cultivation of the land

and sowing of seeds but it includes harvesting, taking of the crop to the threshing ground, then to the godown and to the mandi for the purpose of the sale of the agricultural produce agreeing with the principle laid down by this Court in the case of *Anasuya* (4 supra) wherein this Court after noticing the Division Bench judgment in *The Public Prosecutor Vs. Yellagadda Ramakrishna Rao and Another*, held that when the tractor-cum-trailer i.e., goods vehicle is insured for the purpose of agricultural operations, carrying the coolies for loading or unloading is incidental to the purpose of agricultural operations and the coolies/labourers are not being carried for hire or reward as a stage carriage but as an incident to their carrying on agricultural operations by user of the goods vehicle, namely, tractor-cum-trailer. Thereby there is an implied authorization for permitting to carry the coolies in the tractor-cum-trailer when the vehicle is used for agricultural operations. Therefore, the liability of the owner and insurer is co-extensive and the former has contracted to seek indemnification of the damages that may ensue by use of the goods vehicle in public way which causes death or bodily injury to a third party due to rash and negligent driving of the driver of the motor vehicle and insurance company having undertaken to indemnify the liability jointly and severally is liable to recompense the damages suffered by the owner pursuant to the contract of insurance for which he defrayed the premium and accordingly upheld the award passed by the claims tribunal against the insurance company.

16. Under cover note Ex.B-1, the premium is collected for including LL, driver and 6 labourers, for which policy was issued including third parties. In the absence of any specific plea had been taken by the Insurance Company nor any particular question had been put to the claimants or the owner to the effect that the vehicle was being used for commercial purpose other than agricultural purpose, transportation of gravel to be used for cattle shed by the insured is incidental to rearing of livestock housed in the cattle shed used in connection with the cultivation as breeding and rearing of stock dairying etc., which is known as agricultural purpose. In view of the same, the submission made by the learned Counsel for the Insurance Company that tractor-cum-trailer is used for unconnected to agricultural activity and it is not liable to be indemnified the insured under the policy is only a fallacy.

17. Thus on a careful consideration of the entire facts, this Court does not find any infirmity in the orders passed by the Commissioner.

18. The Civil Miscellaneous Appeals (SR) which are bereft of any merit are liable to be dismissed and they are accordingly dismissed. No costs.