(1999) 10 AP CK 0017

In the Andhra Pradesh High Court

Case No : AAO No. 524 of 1994

New India Assurance Co. Ltd., Mahaboobnagar APPELLANT

Vs

P. Ramulu and another RESPONDENT

Date of Decision : 06-10-1999

Acts Referred:

Workmens Compensation Act, 1923 — Section 4

Citation : (2000) 1 ALD 523 : (2000) 2 AnWR 37

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : Mr. Kota Subba Rao, for the Appellant; Mr. L. Prabhakar Reddy, for the Respondent

Judgement

1. The New India Assurance Company Limited, Mahaboobnagar, lias filed this appeal aggrieved by the order passed by the Commissioner for Workmen''s Compensation, Rangareddy District, in WC Case No. SI of 1989 dated 23-11-1993 holding that the appellant-Insurance Company is liable to pay compensation for Rs.37,041/-.

2. It is contended by the learned Counsel for the appellant that it was mentioned both in the petition and in the evidence that the Jeep bearing No. AHK 5180 was given for hire to the APCCAD Bank Limited, Mahaboobnagar by the opposite party No.l violating the terms and conditions of the policy and hence, the said Bank is liable to pay the compensation. To corroborate the said contention, the appellant has examined T. Saiyanarayana 5/0. T. Veeraiah, Legal Officer of the Appellant-Company, Secunderabad, as RW1. He deposed that the vehicle AI1K 5180 belongs to M. Krishnaiah Goad s/o. M. Sayamia, R/o Maliaboobnagar, and was insured with the appellant under policy No.3161150100399 and valid from 4-4-1988 to 3-4-1989. He further deposed that the policy covers third party risks and that the owner of the vehicle-insured has hired the jeep to APCCAD Bank Limited, Maliaboobnagar and the opposite party No.l violated the terms and conditions of the policy and therefore, the appellant is not liable to pay any

compensation. It is further contended by the learned Counsel for the appellant that though the Commissioner for Workmen''s Compensation has held that the policy issued covering the vehicle involved in the accident was valid on the date of accident, yet it rejected the contention of the appellant that the insured-owner of the vehicle violated the terms and conditions of the policy as he has given the jeep on hire to APCCAD Bank Limited, Mahaboobnagar, on the ground that the insured, who is the employer of the claimant, remained ex parte and has not adduced any evidence. Therefore, it has observed that it is very difficult to believe that whether the jeep was hired on the date of accident ie., 17-11-1988 and held that the appellant herein is liable to pay the compensation to the applicant not only in terms of insurance policy but also because of the power given to the Commissioner for Workmen''s Compensation under the Act to direct a person other than an employer to deposit the compensation. It is also contended by the learned Counsel for the appellant that one of the terms and conditions of the Insurance Policy covering the vehicle involved in the accident, under the heading "Limitation as to the use", reads as follows :

".... the policy does not cover use for hire or reward or for organised racing pace-making reliability trial speed-testing the carriage of goods (other than samples) in connection with any trade or business or use for any purpose in connection with the motor trade...."

As seen from the above said condition that the policy does not cover the risk of any vehicle which was given for hire or reward. If once the vehicle is given for hire by the insured, the Insurance Company is not liable to pay the compensation. As seen from the facts and circumstances of the case, the claimant, who was driver of the vehicle was categorically stated in the petition and also deposed in his evidence that the vehicle was given for hire to the officials of the APCCAD Bank Limited, Mahaboobnagar. Thus the insured owner of the vehicle has violated the terms and conditions of the policy, I am unable to accept the finding of the learned Commissioner for Workmen''s Compensation that inasmuch as the insured-owner of the vehicle has neither adduced any evidence nor filed counter and remained exports, it is difficult to believe that the jeep was hired on the date of accident and therefore, the appellant is liable to pay compensation to the applicant not only in terms of Insurance Policy but also because of the power given to the Commissioner for Workmen''s Compensation under the Act has power to direct a person other than an employer to deposit the compensation. But as seen from the facts and circumstances of the case, it is very much clear that the vehicle was given to the officials of the APCCAD Bank Limited in violation of the terms and conditions of the Insurance Policy.

3, Therefore, for the foregoing reasons, I hold that the appellant-Insurance Company is not liable to pay compensation as the opposite party No. 1 violated the terms and conditions of the Insurance Policy. Thus, the award passed by the Commissioner for Workmen''s Compensation is modified setting aside fastening of the liability on the appellant-Insurance Company. However, it is mentioned that as per the directions of this Court, the appellant has deposited 50% of the compensation awarded and that the claimant has withdrawn the same. Therefore, the appellant is directed not to recover the same from the claimant. For the remaining amount of compensation, the claimant is entitled to proceed against the owner of the vehicle involved in the accident, as per the law.

4. With the above observations, the appeal is allowed partly. No costs.