(2012) 10 AP CK 0027

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 1050 of 2010

The New India Assurance Company Limited APPELLANT

Vs

Banoth Gopal and 2 Others RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Citation : (2013) 1 ALD 239 : (2013) 2 ALT 30 : (2013) 136 FLR 1023 : (2013) 1 LLJ 725

Hon'ble Judges : B.N. Rao Nalla, J

Bench : Single Bench

Advocate : T. Ramulu, for the Appellant; C. Vikram Chandra and 2, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Sri Justice B.N. Rao Nalla

1. Aggrieved by the order in W.C. No. 116 of 2004 dated 05-03-2005 passed by the learned Commissioner for Workmen''s Compensation and Assistant Commissioner of Labour-III, Hyderabad, whereby and whereunder, the learned commissioner allowing the W.C. in part awarded a compensation of Rs. 2,56,999/- to respondent Nos. 1 and 2-applicants under the Workmen''s Compensation Act, 1923, as against their claim of Rs. 4,00,000/-, the appellant-the New India Assurance Company Limited preferred this Civil Miscellaneous Appeal. Appellant herein is insurer of the tractor bearing No. AP24-V-1760 belonging to respondent No. 3 herein and they are Opposite Parties-II and I respectively before the learned Commissioner, and respondent Nos. 1 and 2, who are the applicants, are parents of the deceased workman Banoth Amarsingh @ Ganesh, who died in the accident.

2. For the sake of convenience, the parties are referred to as they arrayed before the learned Commissioner.

3. The case of the applicants before the learned Commissioner is that the

deceased is their elder son and he was working as labourer on the tractor bearing No. AP24-V-1760 on a monthly wages of Rs. 4,000/-. While so, on 25-05-2004, while the deceased was proceeding as a labourer on the tractor in the course of his employment to bring the bricks from Pilligundla Thanda outskirts to Rampur Thanda village, due to rash and negligent driving of the driver of the tractor, the deceased fell down from the tractor and the tractor ran over him, as a result, the deceased sustained grievous injuries and died on the spot. On complaint, the police of Turkapalli Police Station registered a case in Crime No. 28 of 2004 against the driver of the tractor. It is their further case that the deceased was aged 21 years at the time of his death, he was hale and healthy and contributing his earnings to the family. Hence, they filed claim application.

4. Opposite Party-I remained ex parte. Opposite Party-II alone filed its counter denying the case of the applicants in toto.

5. Based on the rival pleadings of the parties, the learned Commissioner framed the following issues for trial:

1. Whether the deceased workman late Sri B. Amarsingh @ Ganesh, met with an accident on 25.5.2004, which arose out of and in the course of his employment as a labourer on the tractor-trailer bearing Nos. AP 24 V 1760 and 1761 in the employment of the 1st opp. Party, and died due (Sic. to) the injuries sustained in the accident?

1. Whether the 2nd opp. party is liable to indemnify the 1st opp. Party in the present case.

2. If yes, who are liable to pay compensation to the applicants? And;

3. What is the amount of compensation entitled by the applicants?

6. To prove their case, applicant No. 1 got himself examined as AW. 1 and got marked Exs. A-1 to A-10. On behalf of Opposite Party-II, its Senior Branch Manager was examined as RW. 1 and marked Exs. D-1 to D-3.

7. The learned Commissioner, after considering the material available on record and relying on the evidence adduced on behalf of the applicants observing that the deceased died in the course of his employment, the driver of the tractor was holding valid driving licence to drive it, Ex. D-3 insurance policy is in force as on the date of accident and the tractor-cum-trailer is insured with Opposite Party-II and that the tractor can be used for other than agricultural purpose, and taking the income of the deceased as fixed by the Government in Public Motor Transport Schedule Employment in G.O. Ms. No. 30, LET & F (Lab-II) dated 27-07-2000 at Rs. 2,312-75 paise per month, partly allowed the application awarding a compensation of Rs. 2,56,999/-. Assailing the same, Opposite Party-II preferred this appeal.

8. Heard the learned counsel on either side and perused the material available on

record.

9. The main contention of the learned counsel for Opposite Party-II (appellant-insurance company)) is that the tractor, the offending vehicle, was insured for agricultural purpose only but violating the same it was used for commercial purpose at the time of accident, as such, it is not liable to indemnify Opposite Party-I, the owner of the vehicle. His further case is that the risk of the labourers is not covered by the policy as no additional premium to cover the risk of the labourers was paid and that the deceased, who was a labourer, sat on the engine, which is a prohibited place for sitting, at the time of accident and due to his negligence he fell down and came under the tyres of the vehicle, as such, fastening liability on the insurance company (OP-II) is erroneous.

10. Per contra, learned counsel for the applicants supporting the judgment impugned contends that the learned Commissioner rightly came to the conclusion that as per Ex. D-3 insurance policy of the tractor, it was subsisting as on the date of accident and both the tractor-cum-trailer were insured covering the risk of two employees on it under the Workmen''s Compensation Act and that it does not show that the vehicle shall not be used for other than agricultural purpose, as such, there is no ground warranting interference of this Court with the order impugned.

11. Now the point that arises for consideration is whether there are any grounds for allowing this appeal?

12. As seen from the grounds of appeal, Opposite Party-II is not disputing or assailing the quantum of compensation awarded by the learned Commissioner, as such, there is no need to go into the question as to whether the quantum of compensation awarded by the learned Commissioner is just and reasonable.

13. In the circumstances, the questions that fall for consideration are as to whether the tractor involved in the accident was used for other than agricultural purpose and the same is in violation of Ex. D-3 policy conditions; whether the risk of the deceased, who was said to be working as labourer on the tractor, is not covered by Ex. D-3 as no additional premium was paid; and whether the deceased was sitting on the engine of the tractor at the time of accident, and, as such, is it not liable to indemnify Opposite Party-I since the same is also in violation of the terms and conditions of the insurance policy.

14. Coming to the question as to whether the vehicle involved in the accident shall not be used for other than agricultural purpose, there is no dispute that as per Ex. A-7, Opposite Party-I is owner of the tractor-trailer involved in the accident, and as per Ex. D-3 (its copy Ex. A-9), it was insured with Opposite Party-II and the same is admitted by it. No doubt, Ex. D-1, which is a proposal form, was submitted for insuring the vehicle for agricultural purpose and Ex. D-2 cover note was specifically issued for agricultural purpose only. But, the case of the applicants is that the bricks, which were carrying in the tractor at the time of accident, are for using the same for construction of a well in the agricultural

fields of its owner i.e. Opposite Party-I and to rebut the same no material is placed by Opposite Party-II either before the learned Commissioner or this Court except bald denial. Further, to a specific question put to RW. 1, he said that he is not aware whether the bricks were being carried for construction of an agricultural well in the fields of Opposite Party-I. Apart from that, Ex. D-3 policy shows that it was a comprehensive policy issued for miscellaneous and other special types of vehicles and the same is subsisting as on the date of accident and that it was issued subject to IMT endorsements 7, 21, 48, 36, 14, 17 and 40. The endorsement IMT 48 shows that it is a comprehensive policy and IMT endorsements 17, 40 and 46 show that it was issued for commercial purpose as well. It further reveals that nowhere in the policy it is mentioned that the vehicle is insured only for agricultural purpose and it shall not be used for other than agricultural purpose. In case the vehicle was insured only for agricultural purpose and it shall not be used for other than agricultural purpose as contended by Opposite Party-II, nothing prevented it from mentioning that "the vehicle shall not be used for other than agricultural purpose and in case of violation of the same it is not liable to indemnify the insured." In the circumstances, as rightly held by the learned Commissioner, Opposite Party-II cannot escape from its liability to indemnify the owner of the vehicle involved in the accident. Thus, the plea of Opposite Party-II that the vehicle shall not be used for other than agricultural purpose is disproved.

15. Coming to the question as to whether the risk of the deceased, who is said to be working as labourer on the vehicle at the time of accident, is not covered by the policy, the case of Opposite Party-II is that as no additional premium was paid to cover the risk of the labourers working on the tractor and since the deceased was said to be working as a labourer on the vehicle at the time of accident, it is not liable to indemnify Opposite Party-I, the owner of the vehicle. No doubt, as found hereinabove, Ex. D-1, which is a proposal form, was submitted for insuring the vehicle for agricultural purpose, Ex. D-2 cover note was specifically issued for agricultural purpose and Ex. D-3 policy shows that it was a comprehensive policy issued for miscellaneous and other special types of vehicles. It further shows that it was issued for both the tractor and the trailer and is subsisting as on the date of accident and it is apparent from the contents of Ex. D-3 that premium was being collected to cover the risk of the owner-cum-driver of the vehicle and also two employees employed on it under the Workmen''s Compensation Act. Thus, it is clear that the policy covers the risk of the two employees employed on the vehicle, as such, the risk of the deceased, who was employed as a labourer on it for loading and unloading the bricks, is covered as he died in the accident during and in the course of his employment. Thus, the plea of Opposite Party-II that the risk of the deceased is not covered by the policy is false and baseless and the same is also disproved.

16. Coming to the last question as to whether Opposite Party-II is not liable to indemnify the insured as the deceased sat on the engine of the vehicle at the time of accident in violation of the policy terms and conditions, no material is

placed either before this Court or the learned Commissioner to show that the deceased was sitting on the engine of the vehicle at the time of accident. On the other hand, the case of the applicants is that the deceased was traveling in the trailer attached to the tractor at the time of accident along with other labourers. In the circumstances, since the present Act i.e. Workmen''s Compensation Act being a welfare legislation, it is held that the deceased fell down from the tractor-trailer in the course of his employment and died, as such, Opposite Party-II cannot escape from its liability to indemnify Opposite Party-I.

17. For the aforesaid reasons, this Court is of the view that there are no merits in this appeal warranting interference of this Court with the impugned award, as such, the appeal is liable to be dismissed. The point is accordingly answered. Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the order in W.C. No. 116 of 2004 dated 05-03-2005 passed by the learned Commissioner for Workmen''s Compensation and Assistant Commissioner of Labour-III, Hyderabad, in all respects. The miscellaneous applications, if any, pending are closed. No order as to costs.