
(2002) 08 AP CK 0053
In the Andhra Pradesh High Court
Case No : AAO No. 199 of 1998

United India Insurance Company Limited	APPELLANT
Vs	
Shaik Husain and Another	RESPONDENT

Date of Decision : 16-08-2002

Acts Referred:

Workmens Compensation Act, 1923 — Section 22

Citation : (2003) 1 ACC 545 : (2004) ACJ 958 : (2002) 5 ALD 617

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : K.L.N. Rao, for the Appellant; Ch. Janardhan Reddy, for the Respondent

Final Decision : Dismissed

Judgement

S. Ananda Reddy, J.—This is an appeal by the Insurance Company aggrieved by the Award passed under the Workmen's Compensation Act, 1923 (hereinafter referred to "the Act") in W.C. No. 1270/95 N.F., dated 16th October, 1997.

For the sake of convenience, the parties are referred as arrayed before the lower authority.

2. As per the application averments, the applicant, who is the 1st Respondent in the appeal, filed the application u/s 22 of the Act claiming a compensation of Rs. 1.20 lakhs together with interest at the rate of 24% per annum with costs and penalty for the personal injuries sustained by him during the course of his employment under the 1st Respondent before the lower authority. The Insurance Company i.e., the 2nd Respondent before the lower authority is the present appellant. It is stated in the application that the applicant was working as a cleaner-cum-worker on the jeep bearing No. AP25-T-481 under the 1st Respondent. He was being paid Rs. 1800/- per month as salary and Rs. 50/- per day as Batta. While the applicant was in his employment on 1-7-1994, while the vehicle was going from Indalwai towards Dharpally side and when the jeep

reached at Moddula Adavai, the driver of the jeep drove the vehicle rashly and negligently and lost control over it, because of which the jeep turned turtle causing fractured injuries to both the legs of the applicant apart from other injuries to the chest, hands, head and other parts of his body. The applicant-injured was admitted in local Government Hospital at the first instance and later shifted to the Government Hospital, Nizamabad, where he was treated by the Government Doctors. The applicant incurred an expenditure of Rs. 40,000/- so far and requires further expenditure towards his treatment. The accident took place during the course of his employment under the 1st Respondent, who is the owner of the vehicle, which was insured with the 2nd Respondent. Hence the claim for awarding compensation.

3. A counter has been filed by the 2nd Respondent disputing the claim made by the applicant and putting him to prove the allegations.

4. The lower authority thereafter framed appropriate issues and after receiving the evidence, both oral and documentary, held that the accident occurred during the course of employment of the applicant. With reference to the claim of compensation, a sum of Rs. 43,924/- was awarded, which was directed to be paid by the 2nd Respondent. Before the lower authority, one of the contentions raised was that the applicant being a cleaner is not covered by the policy issued by the Insurance Company. Though the authority below observed that such an objection was not raised at the earliest point of time, but, however consider the same and found that as per the policy issued by the Insurance Company, it covers six persons in all, including the driver and cleaner and in respect of the above six persons, the premium was collected and there is no specific exclusion of the cleaner. Therefore, it was held against the 2nd Respondent-Insurance Company holding that even the applicant is covered by the policy issued by the 2nd Respondent-Insurance Company.

Aggrieved by the same, the 2nd Respondent-Insurance Company has come up with the present appeal.

5. Though several grounds have been raised, the learned Counsel for the Appellant-Insurance Company strongly contended that the Insurance Company did not collect any additional premium so as to cover the liability with reference to the cleaner and therefore, the Insurance Company is not liable to pay any compensation in respect of the liability of the cleaner. The learned Counsel also contended that the policy issued by the Appellant-Insurance Company is only an act policy and as per the provisions of the said policy only the driver and the passengers are covered and not the cleaner. In fact, it is the contention of the learned Counsel for the appellant that there is no provision for the cleaner in a vehicle like the one involved in the present accident, which is a jeep (maxi-cab). According to the learned Counsel, the total number of persons referred to in the policy as six includes the only driver and the passengers and not the cleaner. The learned Counsel also relied upon a decision of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Nathilal and Others, . The learned Counsel also

relied upon a decision of the Larger Bench of the Apex Court in the case of New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, . Therefore, it is contended by the learned Counsel that unless owner of the vehicle pays additional premium so as to cover the additional person, such as the applicant, who is the cleaner, the Insurance Company is not liable to cover the liability of such persons.

6. The learned Counsel for the first Respondent-claimant, on the other hand, supported the order and sought for dismissal of the appeal.

7. Heard both sides and considered the material on record.

8. It is not in dispute that the 1st Respondent in the appeal, who is the applicant, filed the application claiming compensation on the ground that while he was in the employment of the owner of the jeep, which was met with an accident on 1-7-1993 causing injuries to the claimant; thereby causing partial permanent disability to the extent of 45%, which was even certified and supported by the evidence of the doctor. Though a counter has been filed by the appellant disputing the claim, but the said dispute was negatived and the authority below held that the applicant was in the employment of the first Respondent-owner of the vehicle, which was insured with the 2nd Respondent-Insurance Company and therefore awarded compensation. The limited contest of the appellant is that the Insurance Company did not collect any additional premium so as to cover the claim of the cleaner and therefore, it is not liable to pay any compensation for the injuries received by the cleaner. The learned Counsel referred to the provisions of the Act and contended that as per the provisions of the Act only the driver and the passengers of the vehicle in question are to be covered by the act policy. According to the learned Counsel, the policy that was issued by the Appellant Company is only act policy and therefore, the cleaner of such vehicle is not covered under the said policy. No doubt, there appears to be some merit in the said contention. But a perusal of the policy, which is marked as Ex.B-1, clearly shows that it covers, as per the column shown as "Seating capacity including Driver and Cleaner", six persons in all and in respect of such number of persons insured, a premium of Rs. 815/- was collected. When the issued policy specifically refers to driver and cleaner while referring to the number of persons covered by the policy, it is not open to the Insurance Company to contend that the policy issued was an act policy and as per the said policy cleaner is not covered by it and therefore, the Company is not liable to pay the compensation as the cleaner is not covered by the policy issued by it. The said claim was rejected by the lower authority by referring to the same column of the persons that are insured under the policy. The learned Counsel also relied upon a decision of the Supreme Court in the case of National Insurance Co. Ltd. v. Nathilal, (supra) where the Apex Court considered the issue as to the limited or unlimited liability. In that case, as per the policy issued in favour of the vehicle, the unlimited liability column in the policy was left blank and it was not struck off. Therefore, the owner of the vehicle as well as the claimants claimed that the liability of the Insurance Company is unlimited whereas the Insurance Company

contended that its liability is only limited in view of the premium that was paid by the owner of the vehicle. The Apex Court after referring to the actual premium paid, concluded that though the column of unlimited liability was left blank, still as no additional premium was paid to cover the risk of liability, the liability is only limited, but not unlimited.

Similarly, the learned Counsel wants to infer a similar inference in the present case on the ground that though the term cleaner was not struck off, but as no additional premium was collected, the liability of cleaner is not covered by the policy issued. There is no merit in the said contention of the learned Counsel, when he could not place before this Court that what is the premium and what would be the additional premium payable so as to cover the case of the cleaner. In fact, it is not the case of the Insurance Company that more than six persons were travelling as on the date of the accident and therefore, the cleaner is not covered. The total number of persons covered under the policy is only six and as per the specific mention in the policy, both the driver and the cleaner are shown to have included in that six persons. Even though the act policy does not refer to the term cleaner, but the policy itself shows that the cleaner is also included within the total number of six persons and therefore, there is no possibility to exclude the cleaner, unless it is shown by the Insurance Company that there were six persons travelling in the vehicle excluding the cleaner. In the present case there is no such evidence showing that there were six persons excluding the cleaner who were travelling in the vehicle as at the time of the accident. Therefore, the total number of six persons includes even the cleaner as was provided in the policy. The decision referred to and relied upon has no relevancy to the present facts of the case. Similarly even the decision of the Larger Bench of the Apex Court in the case of *New India Assurance Co. Limited v. C.M. Jaya* (supra) is also not of any assistance to the appellant.

9. Under the above circumstances, the appeal is dismissed. No costs.