

THE HON'BLE SMT JUSTICE P.SREE SUDHA

C.M.A NO.221 OF 2007

ORDER

1. M/s.United India Insurance Company Limited-appellant herein filed this appeal aggrieved by the order dated 07.12.2006 passed in W.C.No.35 of 2004 on the file of the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar, whereby the learned Commissioner allowed the case filed by the claimants and granted compensation.

2. This appeal is filed with the following substantial questions of law:

- 1) Whether the Commissioner is justified in awarding compensation even if the claimants have not established employee and employer relationship between the deceased and the O.P.1.
- 2) Whether the Commissioner is justified in awarding compensation in the absence of employer and employee relationship and when the accident has not taken place during and in the course of employment.
- 3) Whether the Commissioner is correct in applying the provisions of M.V.Act for a claim petition under W.C. Act.

5. Perusal of the order under appeal would show that one Padma-deceased was working as a labourer in the employment of the owner of the Tractor and Tractor bearing Nos.AP 22T 5668 and 5669. On 07.12.2002 while the deceased along with other labourers were proceeding in the Tractor and Tractor from Pebbair to Thirumalaipally Village the Tractor turned turtle and fell in a road side ditch at Miraspally Village outskirts due to which one of the labourers died on the spot and others sustained injuries.

6. The insurance company filed counter. The husband of the deceased was examined as A.W.1 and Exs.A1 to A8 were marked through him. The Branch Manager of the appellant Insurance Company was examined as R.W.1 and the insurance policy was marked as Ex.D1.

7. R.W.1 deposed that the vehicle in question is a goods carrying vehicle and at the time of accident it was carrying a marriage party with nearly 25 persons and thus, the owner of the vehicle violated the terms and conditions of the policy, and as such, the insurance company is not liable to indemnify the owner and even as per the police record the marriage party was travelling in the vehicle at the time of accident. In the cross-

examination, he admitted that the policy was issued for goods carrying commercial vehicle and it covers the risk of five coolies, but the coverage is only at the time of loading and unloading operations.

8. In the order under challenge the Commissioner held that the claimants in this appeal are the husband and minor son of deceased. She met with an accident while she was returning from work along with other labourers and subsequently she died while undergoing treatment, and thus, the accident occurred during the course of employment. The Commissioner has also observed that the premium was collected to cover the risk of five labourers under the Act. Therefore, the owner of the vehicle and insurer are jointly and severally liable to pay compensation to the dependants of the deceased workman.

9. Perusal of the charge sheet would show that D.1 to D.3 and D.6 proceeded on the vehicle in question on 07.12.2002 towards Kodandapoor Village from Madanapoor Village. On the same day evening while they were returning to their village, D4, D5 and L.Ws.5 to 8 who went to Malapally village for paddy harvesting work collected their wages and waiting at Malapally Village for conveyance. L.Ws.2 to 4 and 9 to 18 along with their

children intended to attend the marriage on 08.12.2002. When all the persons were waiting at Malapally bus stage, the deceased who was on her way to Madanapoor village reached and on seeing him the D.4 and D.5 and some of injured persons stopped the tractor stating that they belong to the same village and she boarded the Tractor in order to travel to their village. While the Tractor was proceeding in the limits of Miraspally village, the driver lost control over the vehicle and as a result of which it turned turtle. Due to which D.1 to D.5 sustained injuries and died on the spot. D.6 and the remaining persons received severe injuries.

10. On a perusal of the charge sheet, no doubt, the deceased and injured are labourers, but they are not working with the owner of the Tractor and Tractor and there is no employer and employee relationship between them and that the accident has not occurred during the course of employment since the deceased and injured were returning after attending the labour work in a Tractor along with marriage party, they met with an accident and sustained injuries. Therefore, it amounts to breach of the terms and conditions of the policy and the insurance company is not liable to pay the compensation.

11. In view of the above, this appeal is allowed. However, as the insurance company had already deposited the compensation amount awarded by the Commissioner, the appellant is at liberty to recover the same from the owner of the vehicle in accordance with law. There shall be no order as to costs.

12. Miscellaneous Petitions, if any, pending in this appeal shall stand closed in the light of this final order.

P.SREE SUDHA, J

12th APRIL, 2022

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