



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3333]

WEDNESDAY, THE FOURTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

CIVIL MISCELLANEOUS APPEAL NO: 1171/2017

Between:

1. UNITED INDIA INSURANCE COMPANY LIMITED, REP BY ITS
DIVISIONAL MANAGER DIVISIONAL OFFICE OPPOSITE TO
DHOBIGHAT ROAD KADAPA CITY AND DISTRICT.

...APPELLANT

AND

1. NETAPALLI PRAVALIKA 4 OTHERS, W/O LATE MASTHAN BABU
AGED ABOUT 27 YEARS, HINDU HOUSE -WIFE CHAKTAYAPETA
VILLAGE & MANDAL, KADAPA DISTRICT

2. NETAPALLI HARSITHA, D/O LATE MASTHAN BABU AGED ABOUT 7
YEARS HINDU MINOR REP BY THEIR NEXT FRIEND RESPONDENT
NO 1 BEING THEIR NATURAL GUARDIAN CHAKTAYAPETA
VILLAGE & MANDAL, KADAPA DISTRICT.

3. NETAPALLI HARSHA VARDHAN, S/O MASTHAN BABU AGED
ABOUT 1 1/2 YEARS, HINDU, MINOR REP BY THEIR NEXT FRIEND
RESPONDENT NO.1 BEING THEIR NATURAL GUARDIAN
CHAKTAYAPETA VILLAGE & MANDAL, KADAPA DISTRICT.

4. NETAPALLI UTTAMMA, W/O NAGULIAH, AGED ABOUT 60 YEARS,
HINDU, HOUSE-WIFE CHAKTAYAPETA VILLAGE & MANDAL,
KADAPA DISTRICT.

5. RAYANI SUBBIMMA, W/O KONDAIAH, AGED ABOUT 40 YEARS
HINDU, OWNER OF THE LORRY BEARING NO AP 04 U 3366,
RESIDING AT D.NO.4-1187-A1, NEW COLONY, YERRAGUNTALA

VILLAGE AND MANDAL, KADAPA DISTRICT.

...RESPONDENT(S):

Appeal against orders aggrieved by the orders passed in W.C.No.2 of 2015 dated 15.03.2017 by the Commissioner for Workmen Compensation and Assistant Commissioner of Labour, Kadapa.

IA NO: 1 OF 2017(CMAMP 2045 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass such other orders.

IA NO: 2 OF 2017(CMAMP 2046 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass such other orders.

Counsel for the Appellant:

1.MEDAPATI SANTOSH REDDY

Counsel for the Respondent(S):

1.D KODANDARAMI REDDY

The Court made the following:

JUDGMENT:

The Insurance Company filed the present appeal challenging the order dated 15.03.2017 in W.C.No.2 of 2015 on the file of the Commissioner for Workmens Compensation and Assistant Commissioner of Labour, Kadapa, whereby and whereunder the Tribunal granted compensation of Rs.7,62,633/- (Rupees Seven lakhs Sixty Two thousand Six hundred and Thirty Three only) to the claimants/respondent Nos.1 to 4 herein, as against the claim of Rs.9,27,000/-, on account of the death of the deceased Natapalli Masthan Babu in a motor accident that occurred on 07.08.2014.

02. For the purpose of convenience, the parties will be referred to as they are arrayed before the Tribunal.

03. The claimant filed the claim petition before the Tribunal under Workmen's Compensation Act 1923 and the A.P. Rules 1923, the case of the claimants, in brief, is as follows:

The deceased/Netapalli Masthan Babu was aged 31 years, working as driver of the lorry bearing No.AP04-U-3366, under 1st opposite party and he was earning Rs.9,000/- per month as wages. The 1st opposite party is the registered owner of the lorry bearing No.AP04-U-3366 and the 2nd opposite party is the insurer and the policy was in force as on the date of accident, covering the risk of the driver of the lorry. On the instructions of the 1st opposite party on 06.08.2014 the deceased was driving the lorry to Sydapuram of Nellore District, loaded with timber/sticks and on 07.08.2014,

he left Sydapuram and was proceeding to Ananthapuram to unload the same, unfortunately on the way to Rapur to Chitvel ghat road, the lorry fell into 70 feet deep valley and the lorry was badly damaged, sticks scattered and the deceased who was on steering sustained fatal injuries and met instantaneous death. Thus, it is clear that the deceased died in the course of his employment under 1st opposite party and there is employee and employer relationship in between the deceased and 1st opposite party. Thereafter, the applicants tried to contact the deceased on phone, there was no response, suspecting any accident, the applicants made a search and noticed the dead body of the deceased on 09.08.2014 due to fall of the lorry in the valley. All the belongings of the deceased were lost in the said accident, inspite of the best efforts made by the applicants. Basing on the report, Chitvel police registered a case in Crime No.66 of 2014 under Section 304-A IPC. The deceased had valid driving license to drive heavy transport vehicles. Due to sudden demise of the deceased, the applicants lost their breadwinner.

04. Before the Tribunal, opposite party No.1 remained *ex parte*.

05. The opposite party No.2 filed written statement contending that the applicants have to prove that the deceased died in a motor vehicle accident as driver of the lorry bearing No.AP04-U-3366 by way of documentary evidence such as FIR, charge sheet and the result of criminal case etc. The claimants have also prove that the said lorry was duly insured with 2nd opposite party and that valid coverage of policy and the policy was in force at the time of

accident. The claimants have also to prove the deceased was having subsisting driving license at the time of accident, subject to terms and conditions of the policy, otherwise, 2nd respondent is not liable to indemnify the applicants. The driver of respondent No.1 has no valid and effective driving license at the time of accident and there is violation of terms and conditions of the policy by opposite party No.1. A reading of FIR goes to show that the accident occurred due to rash and negligent driving of the deceased. The opposite party No.2 also denies the age, avocation and income of the deceased and the manner of the accident. The amount of compensation claimed by the applicants is high and excessive and finally sought for dismissal of the claim against the 2nd opposite party.

06. Basing on the pleadings, the Tribunal framed the following issues for trial:

“1. Whether the deceased was a workman as per the provisions of the Workmen’s Compensation Act, 1923 and he met with the accident arising out of and in the course of his employment?

2. What is the age of the deceased at the time of accident?

3. Whether the deceased really died during the course of his employment under 1st opposite party or not?

4. What were the wages paid to the deceased at the time of accident?

5. What is the quantum of compensation payable to the applicants?

5. Who are liable to pay the compensation to the Applicants?”

07. On behalf of the petitioners/claimants, A.W.1 was examined and Exs.A1 to A7 were marked. On behalf of the opposite party No.II, Rws.1 and 2 were examined and Exs.B1 and B2 were marked.

08. After hearing both parties and after considering the oral and documentary evidence on record, the Tribunal direct the opposite parties No.I and II are liable to deposit an amount of Rs.7,62,633/- as compensation besides stamp duty Rs.1,525/- with interest at 12% p.a. from the date of accident till realization by means of demand draft in favour of the Commissioner for Workmen's Compensation and Joint Commissioner for Labour, Kurnool drawn on State Bank of India, Kurnool within 30 days from the date of receipt of this order. If failed to deposit the awarded amount within the stipulated time, it has to pay the interest at 12% p.a. from the date of accident till realization and also penalty under Section 4(A) 3(b) of the Workmen's Compensation Act, 1923. Therefore, the applicants are directed to make representation to the Commissioner for Workmen's Compensation and Joint Commissioner of Labour, Kurnool, for release of compensation amount deposited by the Opposite Parties I and II.

09. Aggrieved by the said award, the appellant/opposite party No.2 preferred this appeal contending that the learned Commissioner failed to observe that the deceased was not under the employment of the respondent No.5/opposite party No.1 and failed to follow the fairly established norms in passing the award. The Authority ought to have seen that the applicants had

not produced the driving license of the deceased to prove that the deceased was a driver. The learned Commissioner ought to have seen that there is no employer and employee relationship between the deceased and the insured of the said vehicle. It is, therefore, prayed to allow the appeal.

10. On the other hand, learned counsel for the claimants/respondent Nos.1 to 4 herein has supported the impugned award and prayed to dismiss the appeal.

11. Now the point for consideration is:

Whether the order of the Tribunal needs any interference?

POINT:

12. To prove that the deceased met with an accident on 07.08.2014 while the deceased was driving the lorry bearing No.AP 04 U 3366 of 1st opposite party as a driver, unfortunately on the way the lorry fell into 70 feet deep valley and the lorry was badly damaged and the deceased who was on steering sustained fatal injuries, and succumbed to death instantaneously, the applicants relied upon the evidence of AW1 and documentary evidence Exs.A1 to A7.

13. A perusal of the record reveals that the evidence of AW1, RW1 & RW2 coupled with Exs.A1 to A7, B1 & B2 clearly proves that on the date of accident i.e., on 07.08.2014 as per the instructions of the 1st opposite party the deceased attended as driver to the lorry and in that process as narrated supra

the deceased succumbed to death. This in turn proves that the deceased was a workmen (Driver) under the employment of 1st opposite party to his lorry and there was employee and employer relationship in between the deceased and the 1st opposite party. Thus, the Tribunal has rightly held that the accident occurred while the deceased was discharging his duty as a driver and the deceased succumbed to death because of the said accident and also rightly held that there exists employer-employee relationship between the 1st opposite party and the deceased.

14. Since the Insured/1st opposite party is the employer of the deceased as on the date of accident, and that the vehicle was insured with the 2nd opposite party/Insurer, covering the risk of driver of the crime vehicle, for which premium is paid, and that the Insurance Policy was in force as on the date of accident and as there exists employer-employee relationship between the 1st opposite party and the deceased. But the deceased has no valid and effective driving license to drive the heavy vehicles at ghat section.

15. Under similar circumstances, the Hon'ble Supreme Court in "**National Insurance Co. Ltd. V. Swaran Singh & Ors.**"¹ Has categorically held that the insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount it can recover the entire amount paid to the third party on behalf of the assured.

¹ (2004) 3 SCC 297

Therefore, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner.

16. In “**National Insurance Co. Ltd. V. Swaran Singh & Ors.,**” (referred above) the Hon’ble Supreme Court while dealing with the case of unauthorized passengers held as follows:

“Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with Sub-section (1) thereof. The right to avoid liability in terms of Sub-section (2) of Section 149 is restricted as has been discussed herein before. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading.”

17. As per the law laid down by the Hon’ble Supreme Court in the Judgment (referred supra) even if the insurer successfully proves a breach of

policy condition, the insurance company may still be directed to pay compensation to the claimant and then recover the amount from the insured (owner of the vehicle). This ensures that the rights of the third-party victim are protected and it was emphasized that insurance policies are statutorily required to protect third parties, and even in cases of breach by the insured, the insurer's liability towards third-party victims does not vanish immediately.

18. In view of the same and in the light of the decision of the Hon'ble Supreme Court referred to supra, the contention of 2nd opposite party – insurance company that it cannot be directed to pay the compensation cannot be accepted. In view of the same, this Court is of the considered opinion that the 2nd opposite party is also jointly and severally liable to pay compensation to the claimants.

19. So far as the quantum of compensation is concerned, since no documentary proof filed to substantiate his income, the Tribunal fixed the wages of the deceased as per minimum wages fixed to heavy vehicle driver vide G.O.Ms.No.83 LET&F (Lab-II) Department, dated 22.11.2006 at Rs.7,406/- per month on the date of accident occurrence. As the age of the deceased was 31 years as on the date of accident, the Tribunal below rightly calculated the compensation amount of Rs.7,62,633/- by taking age, limited wages and the relevant age factor ($\text{Rs.7,406/-} \times 50/100 \times \text{Rs.205.95}$). In addition to the above, the Tribunal has rightly imposed interest @ 12% per annum and also stamp duty of Rs.1,525/-. Thus, the tribunal has rightly

applied the relevant age factor and calculated the amounts entitled by the applicants and awarded compensation.

20. In view of the above discussion, while confirming the quantum of compensation awarded by the Tribunal, this Court deems it appropriate to modify the award passed by the Tribunal only to the extent of directing 2nd opposite party – insurance company to initially pay the compensation to the appellants – claimants and then recover the amount from the owner of the vehicle.

21. Accordingly, the appeal is partly allowed directing 2nd opposite party – Insurance company to initially pay the compensation amount of Rs.7,62,633/- along with interest at the rate of 12% p.a. from the date of petition till realization to the claimants, within a period of three months from the date of receipt of copy of the order and then recover the same from the insured-owner of the offending vehicle (1st opposite party) by filing Execution proceedings before the Tribunal. No costs.

Interim orders granted earlier if any, stand vacated.

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE V.SUJATHA