



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

[3460]

**MONDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL MISCELLANEOUS APPEAL NO: 982/2010

Between:

The Divisional Manager, Anantapur District

...APPELLANT

AND

B Gangamma, Anantapur District & 8 Others

...RESPONDENT(S)

Counsel for the Appellant:

1.NARESH BYRAPANENI

Counsel for the Respondent(S):

1.N ASWARTHA NARAYANA

2.INENI VENKATA PRASAD

The Court made the following:

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL MISCELLANEOUS APPEAL NO.982 of 2010

JUDGMENT:

1. The present C.M.A is filed under Section 30 of Workmen's Compensation Act, 1923 questioning the Order dated 12.11.2009 in W.C.No.12 of 2005 passed by the Commissioner for Workmen's Compensation & Deputy Commissioner of Labour (FAC), Anantapur, Anantapur District.

2. The O.P.No.2-Insurance Company is the Appellant herein.

3. The facts leading to filing of the present appeal are as follows:-

The Claimants are the wife, children and parents of one B. Ramanjaneyulu (hereinafter referred to as 'deceased'). The deceased was employed under O.P.No.1 as Hamali in his Tractor & Trailer bearing Nos.AP-02-K-1278 & 1279. The deceased was being paid Rs.4,500/- per month by way of his avocation. The Tractor & Trailer was being used to carry gravel from hillock situated in Ramapuram Village to the surrounding work spot where gravel was required. The practice was that the driver of the O.P.No.1/owner used to collect coolies from Challavaripalli and Ramapuram Villages etc. and used to go to hillock for chipping the gravel and loading it on the Tractor and Trailer for unloading the same at the required spot.

4. While so, on 24.08.2004, the deceased along with other co-workers boarded the Trailer and while the vehicle was proceeding towards hillock there was a sudden jerk in the movement of the vehicle, the deceased fell down and the wheel of the Trailer ran over him causing grievous injuries. The deceased was immediately

shifted to a private Doctor at Narpala, where he was declared dead. As the deceased died in the course of employment, the compensation was sought from O.P.No.1. A criminal case in Cr.No.35 of 2004 was registered by Narpala P.S., under Section 304-A IPC against the driver of the tractor. Since the vehicle was insured with O.P.No.2-Insurance Company *vide* policy bearing No.051004/47/03/00541, the O.P.No.2-Insurance Company was arrayed as O.P.No.2 in the claim application.

5. O.P.No.1/owner filed his counter admitting to the accident and that the deceased was working as Hamali under him, but denied the wages of Rs.4,000/- per month. It was also pleaded by O.P.No.1/owner in his counter that the vehicle was insured with O.P.No.2-Insurance Company and the O.P.No.2 alone is liable to pay compensation.

6. O.P.No.2-Insurance Company filed its counter denying the claim by disputing the manner of occurrence of accident, wages, the age of the deceased and the jural relationship between the deceased and O.P.No.1/owner as well as the license of the driver of the tractor. It was also pleaded that the deceased was working as a stone cutter but not as a Hamali and that the deceased was negligently standing in between the tractor and trailer connecting with the iron rod, the deceased fell under the Trailer on account of jerking, which resulted in the death. As the deceased was negligently standing in the trailer, no liability can be fastened on the O.P.No.2-Insurance Company.

7. On the basis of respective pleadings, the Commissioner framed the following issues:-

- 1) *Whether the deceased was a workman as per the provisions of the workmen's compensation Act, 1923 and he met the accident arising out of and in the course of his employment resulting in to death?*
- 2) *Relationship of employee-employer between driver and Opposite Party-1?*
- 3) *What was the age of the deceased-workman at the time of accident?*
- 4) *What were the wages paid to the deceased at the time of accident?*
- 5) *The legal heirs of the deceased workman.*
- 6) *What is the amount of compensation payable to the deceased?*
- 7) *Who are liable to pay compensation?*

8. In the course of enquiry, the Claimant No.1 i.e. the wife of the deceased was examined as A.W.1 and she reiterated the claim averments and got marked Exs.A.1 to A.5 i.e. attested Xerox copy of F.I.R, attested Copy of Inquest Report, attested Xerox copy of Post Mortem Certificate, Office copy of Notice issued to the Respondents and Postal Receipts respectively in support of her claim.

9. One B. Peddanna, who was working along with the deceased and eking livelihood as Hamali and being an eyewitness to the accident was examined as A.W.2. The A.W.2 had deposed that the driver of the tractor and trailer had driven the vehicle negligently causing sudden jerk which lead to the falling of the deceased under the trailer and that the accident occurred only on account of the negligent driving of the driver.

10. The employer/O.P.No.1 also filed his chief affidavit as P.W.1 stating that the deceased was working as a labourer in his tractor along with others. It was deposed in his chief affidavit that the deceased along with others were engaged to bring the stones required for fencing around his land to prevent cattle and other animals from entering into the land. It was deposed that on 24.08.2004 O.P.No.1/owner had instructed the driver to pick up the deceased and other workers to bring stones from the hillock, which are required for fencing around his land to prevent cattle from entering into the land and the accident occurred in the said process.

11. O.P.No.1 was also cross examined by O.P.No.2-Insurance Company and in his cross examination, he stated that the deceased was working under him six months prior to the accident and he used to pay wages on daily basis. The specific averment in the chief affidavit of the O.P.No.1/owner that the deceased and other workers were going to hillock to bring stones for fencing his land to prevent cattle etc. on that particular day was not questioned in the cross examination by O.P.No.2-Insurance Company.

12. On behalf of O.P.No.2-Insurance Company, one Sri Ram Naik, who was working as Administrative Officer in O.P.No.2-Insurance Company was examined as R.W.2 and he reiterated the counter averments and stated that as the vehicle was being used for agricultural purpose and therefore the question of allowing passengers or Hamalis does not arise. The Exs.B.2 to B.6 i.e. true copy of the policy with conditions, True copy of 'B' extract for tractor, true copy of 'B' extract for trailer, investigation Report and certified copy of Section 161 Cr.P.C statement of B. Chinna Sivanna and others recorded by police respectively were marked.

13. After evaluating the oral and documentary evidence, the Commissioner held that the deceased was employed under O.P.No.1/owner and the accident occurred in the course of employment and O.P.Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2,13,595/- with interest at the rate of 12% p.a. from the date of filing of the application i.e. on 04.03.2005 till realization. Hence, the present C.M.A is filed.

14. Heard Sri Naresh Byrapaneni, learned counsel for the Appellant-Insurance Company and Sri N. Aswartha Narayana and Sri Ineni Venkata Prasad, learned counsel appearing for the Respondents.

15. In the present appeal, two grounds were urged by the counsel for the Appellant that the Insurance company should not be made liable for the compensation when the O.P.No.1/owner had admitted that no premium was paid covering the deceased Coolie. It was also argued that the vehicle was insured only for agricultural purpose, but the vehicle was being used for non-agricultural purpose and therefore no liability can be fastened on the insurance company.

16. The counsel for the Respondents argued in support of the order of the Commissioner and that the Commissioner considered Ex.B.2 policy and noted that the amount of Rs.1,737/- was paid towards third party premium and as the premium was paid towards third party, the insurance company cannot disown its liability to pay compensation. As regards the usage of the vehicle for non-agricultural purpose, it was contended by the counsel for the respondents that the O.P.No.1/owner was not cross examined on

this aspect and the specific deposition of O.P.No.1 that the vehicle was being used for the purpose of bringing stones so as to enable fencing around land of O.P.No.1/owner on that particular day. Since this aspect of chief examination of O.P.No.1 was not cross examined by O.P.No.2-Insurance Company, it is not open for the Appellant-Insurance Company to raise this issue in the present appeal.

17. Having heard the respective contentions, this Court opines as under:- Regarding the first ground that no premium was paid to cover the deceased, it is to be noted that deceased was travelling as a workman and is not a gratuitous passenger. The Section 145 (i) of the Motor Vehicles Act, 1988 was amended *vide* the Motor Vehicles (Amendment) Act, 2019 elaborating the term '*third party*'. As per the amended definition, '*third party*' includes any co-worker on transport vehicle other than the owner and the driver. The amended Section 145 (1) reads as under:

145 (i) "third party" includes the Government, the driver and any other co-worker on a transport vehicle.

18. This Court in ***National Insurance Co. Ltd. v. Savidhi Anjaneyulu***¹ has held that the amendment to the definition of *Section 145 (i)* of the Motor Vehicles (Amendment) Act, 2019 is only clarificatory and therefore it is applicable retrospectively covering the risk of the driver or any other co-worker on transport vehicle as third-party.

¹ SCC OnLine AP 4840

19. In the instant case, the deceased being a Hamali cannot be said to be a gratuitous passenger and comes within the amended definition of '*third party*' under section 145(i) of the Motor Vehicles (Amendment) Act, 2019 as it stands today and would be covered by Ex.B.2 Policy.

20. The second contention of the counsel for the Appellant-Insurance Company is that the vehicle was used for non-agricultural purpose and liability should not be imposed on the insurance company. As rightly contended by the counsel for the Respondents, O.P.No.1/owner had clearly deposed in Paragraph 2 of his chief examination affidavit that the vehicle on that particular day was being used to bring stones from the hillock for the purpose of fencing of his land to prevent cattle etc. from entering into his land. O.P.No.2-Insurance Company did not cross examine O.P.No.1/owner on this aspect in their cross examination.

21. In the absence of any cross examination on this aspect, by the Insurance Company, the same would amount to admission by the insurance company regarding the purpose of usage of the vehicle on that particular day. The requirement of stones around the agricultural land of O.P.No.1 being allied to the agricultural purpose, it is not open to the insurance company to contend otherwise.

22. This Court does not find any merit in the submission of the counsel for the Appellant-Insurance Company. Therefore, this Court does not find any substantial question of law for interference. Accordingly, the C.M.A. is dismissed. There shall be no order as to costs.

23. As the accident pertains to the year 2004 and as 21 years have lapsed and considering the uncertain addresses of the Claimants, the State Legal Services Authority is directed to coordinate with the concerned Departments and intimate the outcome of the appeal and ensure that the compensation with accrued interest is deposited in the Aadhar linked bank account of the Claimants.

24. The Registry is directed to mark a cop of this Order to the State Legal Services Authority to take necessary action.

As a sequel, pending applications, if any, shall stand closed.

NYAPATHY VIJAY, J

Date: 03.03.2025

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THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL MISCELLANEOUS APPEAL NO.982 of 2010

Date: 03.03.2025

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