

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

WEDNESDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

C M A NO: 3200 OF 2004

Appeal filed Under Section 30 of Workmen's Compensation Act against the Order dated 09.10.2003 made in W.C.No.48 of 2002 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad.

Between:

The Branch Manager, United India Insurance Company Limited, Armoor, Nizamabad District.

...APPELLANT/OPPOSITE PARTY NO.2

AND

1. N. Shanker, S/o. Rajanna, Occ: Labour on Auto Trolley bearing No. AP-25-T-5180 R/o. Kisan Nagar Village, Balkonda Mandal, Nizamabad District.
2. G. Venkateshwar, S/o. G. Ramuloo Owner of Auto Trolley bearing no. AP-25-T-5180 H.No. 2-14, Fathepoor Village, Armoor Mandal, Nizamabad District.

...RESPONDENTS/APPLICANT OPPOSITE PARTY NO.1

Counsel for the Appellant :SRI. E.VENUGOPAL REDDY

Counsel for Respondent No.1:SRI. K.M. MAHENDER REDDY

The Court delivered the following: JUDGMENT

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL MISCELLANEOUS APPEAL No.3200 of 2004

JUDGMENT:

In this appeal filed by the United India Insurance Company Limited, challenge is to the order dated 09.10.2003 passed by the Commissioner, Workmen's Compensation, in W.C.Case No.48/2002, granting compensation of Rs.1,33,781/- to the claimant for the injuries suffered by him in the accident that occurred on 09.09.2001 while the claimant was travelling in the Auto Trolley bearing No.AP-25-T-5180.

When the matter is taken up, it is represented by both the learned counsels that the subject matter of this appeal is squarely covered by the Judgment of this Court in CMA No.3221 of 2004, dated 05.08.2010.

CMA No.3221 of 2004 was filed by the United India Insurance Company (the appellant herein) challenging the compensation awarded by the Commissioner in W.C.Case No.49 of 2002 in respect of the claimant therein who travelled in the very same Auto bearing No.AP-25T-5180. This Court, by Judgment dated 05.08.2010, allowed the appeal by observing that the claimant in CMA No.3221 of 2004 was travelling in the Auto as a passenger, carrying goat for celebrating Mysamma Festival at Chepoor village, and the claimant was not a labourer but a passenger. This Court further held that in the absence of coverage under the insurance policy, the insurance company cannot be fastened with the liability to pay the compensation, and therefore the Owner of the Auto bearing No.AP-25T-5180 is liable to satisfy the Award passed by the Commissioner, Workmen's Compensation, and accordingly exonerated the insurance company.

A perusal of the Judgment dated 05.08.2010 in CMA No.3221 of 2004 would show that the present appeal is squarely covered by the orders passed by this Court in CMA No.3221 of 2004.

Accordingly, this appeal is also allowed in terms of Judgment dated 05.08.2010 passed by this Court in CMA No.3221 of 2004. No costs. Miscellaneous petitions, if any pending, shall stand closed.

**Sd/-B.S.CHIRANJEEVI
JOINT REGISTRAR
SECTION OFFICER**

To,

1. The Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad.(With records)
2. One CC to SRI. E VENUGOPAL REDDY Advocate [OPUC]
3. One CC to SRI. K M MAHENDER REDDY Advocate [OPUC]
4. Two CD Copies
5. One Spare Copy
(Along with a copy of the judgment passed by this Court in CMA No.3221 of 2004 dated 05/08/2010)

CCL



HIGH COURT

DATED:16/06/2021

JUDGMENT

CMA.No.3200 of 2004



ALLOWING THE C.M.A.

NO COSTS.

*✓
19/07
(6)*

HONOURABLE SRI JUSTICE GHULAM MOHAMMED

C.M.A.No. 3221 OF 2004

JUDGMENT:

This appeal filed under Section 30 of the Workmen Compensation Act by the United Insurance Company, is directed against the order dated 9.10.2003, passed by the Commissioner for the Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad (for short 'the Commissioner') in W.C.No. 49 of 2002 filed by the claimant claiming compensation of Rs. 2,50,000/- for the injuries sustained by him in a motor accident occurred on 09.09.2001 at about 8.00 a.m when he was traveling along with other labourers in a Auto Trally bearing No. AP 25 T 5180 from Kisan Nagar to Chepoor Village after attending a ceremony of Maisamma Festival pertaining to Toddy Shoppers and when they reached near Ring Road at Balkonda Village Sivar, the driver of the said auto trally drove it in rash and negligent manner at high speed and tried to escape lorry which was coming in the opposite direction turned turtle, due to which the

claimant received fracture on left shoulder scapula, injuries on left hand middle finger left knee joint and injuries on head, legs, hands, back, chest and other various parts of the body. First respondent-Owner of the Auto Trally filed counter admitting the accident, employment, age and salary of the workman. Second Respondent-Insurance Company filed counter denying allegations made in the petition.

2. The Commissioner having held that the accident occurred due to rash and negligent driving of the driver of the Auto Trally, awarded a sum of Rs. 1,10,021/- payable by both the respondents being owner of the Auto Trally and Insurer.

3. Learned counsel appearing for the appellant-Insurance Company contended that the Commissioner erred in fixing the liability on the appellant where there is no requirement to cover persons being carried in a goods vehicle in any capacity. He also contended that the Commissioner ought to have seen that the first respondent-owner of the Auto Trally violated the terms and conditions of the policy.

4. Heard the learned counsel appearing for the appellant and perused the entire material made available on record.
5. The point that arises for consideration is as to whether in a goods vehicle the passengers are not permitted to travel under the policy conditions?
6. As seen from the record, on 29.11.2002 the claimant, who was examined as PW-1 stated that he met with an accident during the course of employment and become disabled and he was getting a monthly salary of Rs. 5,000/- and he was aged 19 years at the time of accident. The applicant filed copies of Insurance Policy marked as EX. A9 and Ex. B1, which shows that the vehicle was in the name of the second respondent herein, owner of the vehicle and it is having valid insurance as on the date of accident. As per Ex. A1 FIR the injured persons were traveling in the auto along with goat to celebrate "Mysamma Festival" at Chepur Village, as such, the injured persons were traveling as passengers, and not as labourers and therefore, the policy does not cover the risk and the Insurance Company is not liable to pay any compensation. This Court in BRANCH MANAGER, UNITED INDIA INSURANCE COMPNAY LIMITED,

KAMAREDDY, NIZAMABAD DISTRICT VS. KONDAKOTLA
SAROJA AND OTHERS¹ held as under:

"The decisions upon which reliance is laid by the learned counsel for the respondents-claimants are contrary to the ratio laid down by the Supreme Court and, therefore, the same cannot be taken into consideration to fix the liability on the Insurance Company. Further, the Supreme Court in ORIENTAL INSURANCE COMPANY LIMITED VS. MEENA VARIYAL²'s case, after interpreting Section 147 of the Act accepted the ratio laid down in PUSHPABAI PURSHOTTAM UDESHI AND OTHERS VS. M/S RANJIT GINNING AND PRESSING COMPNAY (P) LIMITED AND ANOTHR³' case. Once the Insurance Company under Ex. A-5 cover note has not undertaken the liability by collecting extra premium for the passengers who traveled in the insured vehicle, it cannot be held liable to pay the compensation and it is only the respondent-owner of the vehicle who is liable to satisfy the decree and pay the compensation amount."

7. Following the above judgment the Civil Miscellaneous Appeal filed by the Insurance Company is allowed excluding the liability of the Insurance Company.

¹ 2008 (5) ALD 288 (DB)

² 2007 (3) ALD 99 SC=AIR 2007 SC 1609

³ AIR 1977 SC 1735=(1977) 3 SCR 372

Second respondent-Owner of the Auto Trally bearing No. AP-25 T 5180 is liable to satisfy the decree and pay the compensation amount. There shall be no order as to costs.

GHULAM MOHAMMED, J

Date: 05.08.2010

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