



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

C.M.A. No.265 of 2010

Between:

The National Insurance Company Limited,
Rep. by its Branch Manager, Ananthapur.

.... Appellant

And

1. Nidiganti Narasimhulu and three others.

....Respondents.

C.M.A. No.270 of 2010

Between:

The National Insurance Company Limited,
Rep. by its Branch Manager, Ananthapur.

.... Appellant

And

1. Chavula Jayanna and three others.

....Respondents.

C.M.A. No.277 of 2010

Between:

The National Insurance Company Limited,
Rep. by its Branch Manager, Ananthapur.

.... Appellant

And

1. Kolatam Nagaiah and three others.

....Respondents.

C.M.A. No.594 of 2010

Between:

The National Insurance Company Limited,
Rep. by its Branch Manager, Ananthapur.

.... Appellant

And

1. Nidiganti Nagaiah and three others.

....Respondents.



Date of Order pronounced on : 10.05.2023

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked: Yes/No
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy : Yes/No
of the Judgment?

VENKATA JYOTHIRMAI PRATAPA, J



***HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

+ C.M.A No. 265 of 2010

% 10.05.2023

The National Insurance Company Limited,
Rep. by its Branch Manager, Ananthapur

.... Appellant

And

1. Nidiganti Narasimhulu and three others.

....Respondents.

! Counsel for the Petitioner : Sri K. Sundar Ganta

Counsel for the Respondents: Sri N. Aswartha Narayana
Sri G. L. Nageswar Rao

+ C.M.A No. 270 of 2010

The National Insurance Company Limited,
Rep. by its Branch Manager, Ananthapur

.... Appellant

And

1. Chavula Jayanna and three others.

....Respondents.

! Counsel for the Petitioner : Sri K. Sundar Ganta

Counsel for the Respondents: Sri N. Aswartha Narayana
Sri G.L. Nageswara Rao

+ C.M.A No. 277 of 2010

The National Insurance Company Limited,
Rep. by its Branch Manager, Ananthapur

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And



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1. Kolatam Nagaiah and three others.

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! Counsel for the Petitioner :

Sri K. Sundar Ganta

Counsel for the Respondents:

Sri G.L. Nageswara Rao

+ C.M.A No. 594 of 2010

The National Insurance Company Limited,
Rep. by its Branch Manager, Ananthapur

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And

1. Nidiganti Nagaiah and three others.

....Respondents.

! Counsel for the Petitioner :

Sri K. Sundar Ganta

Counsel for the Respondents:

Sri N. Aswartha Narayana
Sri G.L. Nageswara Rao

<Gist :

>Head Note:

? Cases referred:



HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

C.M.A.No.265, 270, 277 and 594 of 2010

COMMON JUDGMENT:-

1. These Civil Miscellaneous Appeals are directed under Section 30 of the Workmen Compensation Act against the Order dated 07.08.2009 in W.C.Nos.3,5,6, and 4 of 2005 on the file of the Commissioner for Workmen's Compensation & Deputy Commissioner of Labour, Anantapur.

Parties before the learned Commissioner:

2. The appellants herein were the Opposite Party No.2/Insurance Company and the respondents herein were the Applicants and the Owner of the Tipper respectively before the learned Commissioner.

Reference of parties in the appeal:

3. For the sake of convenience and understanding, the parties are referred to as they were arrayed before the learned Commissioner.



4. In order to explain the facts and determine the common issue involved in all these CMAs, this Court has taken C.M.A.No.265 of 2010 as these appeals are filed by the Insurance Company as against the same accident.

The case of the Respondents Nos. 1 and 2/Applicants in

CMA No.265 of 2010 in nutshell:

5. The applicants are the parents of the deceased Nidiganti Balanarasimhulu, S/o Nidiganti Narasimhulu, who died in the accident on 17.02.2004 at about 10.00 am. The deceased was working as a workman under the Opposite Party No.1/Respondent No.3 herein. On the instructions of the Opposite Party No.1, the deceased and some other workers went to attend Tar road work between Pathipadu and Yellanur Road. As there was shortage of stone metal, all the workers went to the stone crusher of one Kullaiah Reddy at Kondapuram in the Tipper bearing No. KA 34 3300 belonging to the Opposite Party No.1 and got loaded tipper with stone metal and while they were returning to the work spot, the driver of the Tipper drove the vehicle in a rash and negligent manner, as a result of which, the



tipper turned turtled. In the said accident, the deceased along with three others were died. A case in Cr.No.3 of 2004 for the offences under Sections 304(A), 338, 337 IPC and Section 134 (A) (B) r/w 187 MV Act was registered by the Kondapuram P.S., Kadapa District, against the driver of the tipper. Therefore, the applicants sought compensation of Rs.4,50,000/- for the untimely death of the deceased against the owner and insurance company.

The case of the Applicants in CMA No.270 of 2010 in nutshell:

The applicants are the parents of the deceased-Chavula Narayana Swamy, who died in the accident on 17.02.2004 at about 10.00 am. The deceased Narayana Swamy was working as a workman under the Opposite Party No.1 in his tipper bearing No. KA 34 3300. After loading the tipper with stone metal at the stone crusher and while they were returned to the work spot, the accident occurred. In the said accident, the deceased along with three others were died. A case in Cr.No.3 of 2004 was registered by the Kondapuram P.S, Kadapa District, against the driver of the tipper. The deceased was aged 20 years



and earning Rs.5,000/- per month as wages at the time of the accident. Therefore, the applicants sought compensation of Rs.4,50,000/- for the untimely death of the deceased against the owner and insurance company.

The case of the Applicants in CMA No.277 of 2010 in nutshell:

The applicants are the parents of the deceased-Kolatam Suresh, who died in the accident on 17.02.2004 at about 10.00 am. The deceased Suresh was working as a workman under the Opposite Party No.1 in his tipper bearing No. KA 34 3300. After loading the tipper with stone metal at the stone crusher and while they were returned to the work spot, the accident occurred. In the said accident, the deceased along with three others were died. A case in Cr.No.3 of 2004 was registered by the Kondapuram P.S, Kadapa District, against the driver of the tipper. The deceased was aged 19 years and was earning Rs.5,000/- per month as wages at the time of the accident. Therefore, the applicants sought compensation of Rs.4,50,000/- for the untimely death of the deceased against the owner and insurance company.



The case of the Applicants in CMA No.594 of 2010 in nutshell:

The applicants are the parents of the deceased-Nidiganti Narasimhulu, who died in the accident on 17.02.2004 at about 10.00 am. The deceased was working as a workman under the Opposite Party No.1 in his tipper bearing No. KA 34 3300. After loading the tipper with stone metal at the stone crusher and while they were returned to the work spot, the accident occurred. In the said accident, the deceased along with three others were died. A case in Cr.No.3 of 2004 was registered by the Kondapuram P.S, Kadapa District, against the driver of the tipper. The deceased was aged 17 years and was earning Rs.5,000/- as wages at the time of the accident. Therefore, the applicants sought compensation of Rs.4,50,000/- for the untimely death of the deceased against the owner and insurance company.

Version of Opposite Party No.1 and 2/Employer and the Insurance Company:

6. Opposite Party No.1/employer filed Counter stating that Opposite Party No.1 engaged the deceased as a coolie and



paying Rs.5000/- per month and the tipper was insured with Opposite Party No.2/insurance company and the policy was in force by the date of accident, and therefore, the Opposite Party No.2 is only liable to pay the compensation and therefore, prays to dismiss the application against Opposite Party No.1.

(b) Opposite Party No.2/Insurance Company filed Counter denying all the averments made in the claim application i.e., the nature of the employment, age and the manner of accident, the death of the deceased in the course of employment. It further submits that as per the terms and conditions of the policy, the coverage of risk for coolies will be only at the time of loading and unloading, but not during the transit. As the deceased and others died during the transit, the Opposite Party No.2 is not liable to pay the compensation and prays to dismiss the application.

In Enquiry:

7. (i) During the course of enquiry, on behalf of the applicants, A.Ws. 1 to 3 were examined and Exs. A.1 to A.8 were marked.



(ii) After hearing both the counsel and on appreciation of the evidence, the learned Commissioner awarded compensation of Rs.2,55,639/- to the claimants against the Opposite Party Nos. 1 and 2. Insofar as the interest part is concerned, the learned commissioner awarded interest at 12% per annum from the date of petition till the date of realization against the employer, exonerating the Insurance Company.

Grounds of Appeal:

8. Feeling aggrieved and dissatisfied with the order impugned, these appeals are preferred by the Insurance Company by raising the following substantial questions of law, which are mentioned in the Memo of Appeal:

“ (1) The tribunal further failed to appreciate that there is no liability in the facts and circumstances of the case and also that as per the Workmen’s Compensation Act, the entitlement of the claim is to be proved that it confirms with the legal liability as contemplated under the Workmen’s Compensation Act, 1923 i.e., whether the injured/deceased is a workmen as per the provisions of the Act ? and further



also whether the accident arose out of employment and during the course of employment? Which is neither considered nor decided in accordance with the pleadings and evidence on record.

(2) The tribunal below utterly went over board by not appreciating the evidence with regard to the policy, the liability under the said policy filed and relied upon and having proved that there is no liability against the appellant insurance company much less that there is a case for indemnifying the insured the tribunal without jurisdiction passed the Order under challenge.

(3) The endeavor of the Tribunal below was to award amounts against owner and the insurance company by not making an endeavour to interpret the contract of the insurance between the appellant and the insured i.e., the respondent No.2 as per the Ex.B.1 document, but by assuming the employment, income and age etc., which are all perverse findings without any proof.



(4) The tribunal below utterly failed to note and appreciate that it had no jurisdiction much less expected to venture into liberalism of the terms and condition of the policy which goes to the root of the liability contracted and to rewrite the contract or substitute the terms which were not intended by the parties as the Tribunal cannot give nor the insured can claim anything more than what is covered by the Insurance Policy.

(5) The tribunal below further erred in not appreciating that the respondent No.1 had failed to make out a case under the Workmen's Compensation Act that is whether the injured/deceased is a workmen as per the provisions of the Act? And further also, whether the accident arose out of employment and during the course of employment? By cogent and/or admissible evidence.

(6) The tribunal below failed to note and appreciate that the evidence on record proves that the respondent Nos. 1 and 2 are not entitled as the deceased was not entitled to taken on the vehicle as an workmen in a goods carrying



commercial vehicle and that the insurance coverage if any is for labourers who are engaged at the time of loading and unloading and not entitled to travel along with the goods as it is prohibited for person travelling in the good carrying vehicles and even if sitting on the vehicle will amount to be only as a gratuitous passenger who in law is not covered and therefore, no liability.”

9. Heard the learned counsel for the Appellants and the learned counsel for the Respondents. Perused the material available on record.

10. During the course of arguments, the learned counsel for the appellants would submit that the accident occurred while the deceased labourers were proceeding in a tipper, which is a goods carrying commercial vehicle and the risk of workers, who were engaged at the time of loading and unloading the goods only and the policy does not cover the risk of the labourers, who were travelling in the goods carrying vehicle, and hence, they are the gratuitous passengers and therefore, no liability can be fastened against the insurance company.



11. Per contra, learned counsel for the respondents herein would submit that admittedly there is employer and employee relationship between the Opposite Party No.1 and the deceased. The applicants are the parents of the deceased labourers, who last their breath at the very tender age. On 17.02.2004 at about 10.00 am on the instructions of Opposite Party No.1 i.e., the owner of the tipper, all the workers went for attending Tar Road work between Pathipadu and Yellanur Road and as there was short of stone metal, all the workers went to the stone crusher at Kondapuram and thereafter, they got loaded the Tipper with stone metal and while they were coming to the workspot to continue the work, in the meanwhile, the accident occurred, wherein they all fell down under the load of metal. In the said accident, four workers died. Though the accident occurred physically when these workers were coming to the workspot after loading the Metal, it is the integral part of their duty and therefore, they can never be considered as gratuitous passengers. The learned Commissioner rightly awarded compensation to the claimants, but exonerated the insurance



company for the payment of interest, which is under challenge in the appeals preferred by the claimants in CMA Nos. 995 of 2011, 843 and 862 of 2013 and 92 of 2014. There are no grounds to interfere into the Order impugned on the points raised by the Opposite Party No.2/Insurance company. There are no violations of the policy. The deceased workers died at tender age. The accident arose out of and in the course of employment. Therefore, they pray to dismiss the appeals filed by the insurance company.

12. As seen from the record, the dependants of the deceased employees deposed before the learned Commissioner as a first witness in all cases narrated the details of the deceased and they at one breathe said that the death of the deceased occurred during the course of employment. The evidence of the applicants coupled with the Ex.A.1 indicates that the matter is forthwith reported to the police and they registered a crime for the offence punishable under Sections 304-A and 338 of IPC. Inquest Reports for four deceased workers filed in respective appeals. There is some merit in the argument of the learned



counsel for the respondents that though the workers died in the accident while proceeding in a tipper, it is their integral part of duty. To maintain a claim, the applicants have to prove that there is a causal connection between the death and the work of the employee. In the present case, admittedly, they were engaged by Opposite Party No.1 being the owner of the vehicle for loading and unloading the goods. The record further shows that on that fateful date, they were entrusted to attend the work of Thar Road. Obviously, the metal stone is very much required for laying Thar Road. As there was shortage of metal stone, they were instructed by their owner to go to certain place for bringing the metal stone to proceed with the work. In obedience of such direction of the owner, they went to the stone crusher of one Kullaiah Reddy at Kondapuram in the Tipper belonging to the Opposite Party No.1 and loaded the metal stone in the tipper and while they were coming back to the workspot, the accident occurred. Viewed from any angle, the argument of the insurance company that the death is not occurred out of and in the course of employment holds no water since it is integral part of their duty.



13. The insurance company examined his Senior Assistant as RW.1. He categorically deposed that they have issued Policy in favour of the owner of Opposite Party No.1 covering the period from 17.10.2003 to 16.10.2004 and the vehicle is a commercial vehicle and the policy was in force at the time of the accident. The owner paid Rs.175/- for the employees under Workmen's Compensation Act. Accordingly, he filed the Policy under Ex.B.1. This is not the case where the deceased workers are travelling in the goods vehicle beyond the scope of their employment. On that particular day, it is their duty to lay a Thar Road. Only for the purpose of their work, they have gone to stone crusher of Kullaiah Reddy at Kondapuram. Such being the case, it cannot be said that the accident occurred which is beyond the scope of their employment. AW.2, who was in the company of the deceased at the time of accident, categorically deposed about the manner in which it occurred. On the other hand, Opposite Party No.1 filed Counter admitting the fact that he engaged the deceased workers as coolies and he used to pay the wages. When the tipper reached the electrical sub station,



Pathakondapuram, it turned turtle due to the negligent driving of the driver, as a result, four coolies died on the spot. Opposite Party No.2 is only liable to pay the compensation since the policy was in force as on the date of the accident. It is not the case of the insurance company that they have not issued any policy and the risk of the workers does not cover under the policy. But they say though there is insurance policy, the accident occurred beyond the scope of the employment that is why they are not responsible for payment of the compensation. The argument of the learned counsel for the Appellants falls to ground since the accident occurred while the deceased workers were discharging their duties as employees of the Opposite Party No.1. The evidence of AW.1 and the AW.2 coupled with Exs. A.1 to A.4 would establish that there exists a relationship between the deceased and the Opposite Party No.1 as employee and employer and the accident occurred out of and in the course of employment. In view of the aforementioned facts and circumstances, the learned Commissioner rightly granted compensation to the applicants. This Court does not find any irregularity and illegality in the order impugned.



14. Accordingly, these Civil Miscellaneous Appeals are dismissed. In the circumstances of the case, each party bear their own costs.

Miscellaneous petitions pending, if any, in this case shall stand closed.

VENKATA JYOTHIRMAI PRATAPA, J

Date :10.05.2023
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HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

C.M.A.No.265, 270, 277 and 594 of 2010

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