

**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI****\*\*\*****C.M.A. No.483 of 2009**

Between:

Sri Shaik Basheer Ahmed

**.... Appellant****And**

Sri Gopulapati Saida and another.

**....Respondents.**

Date of Order pronounced on : 15.02.2023

**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?

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**VENKATA JYOTHIRMAI PRATAPA, J**



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

**+ C.M.A No.483 of 2009**

% 15.02.2023

# Sri Shaik Basheer Ahmed

**.... Appellant**

**And**

Sri Gogulapati Saida and another.

**....Respondents.**

! Counsel for the Petitioner : Sri A. Rajendra Babu.

Counsel for the Respondents: Dr. Challa Srinivasa Reddy

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>Head Note:

? Cases referred:

1) 2014 ACJ 467

2) 2022 Live Law (SC) 102



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

**C.M.A.No.483 of 2009**

**JUDGMENT:-**

This Civil Miscellaneous Appeal is directed under Section 30 of the Workmen Compensation Act, 1923 (in short the Act) against impugned Order in W.C.No.30/2005, dated 06.01.2008 by the learned Commissioner for Workmen's Compensation, Labour-II Circle, Guntur. (in short, the Commissioner).

2. The appellant herein was the applicant/injured, who laid a claim seeking compensation of Rs.3,00,000/- against the owner and insurance company. The respondent Nos., 1 and 2 herein were the owner and insurance company of the offending vehicle. For the sake of convenience, parties will be referred to as arrayed before the learned Commissioner.

3. The claim of the applicant is that he was employed as a cleaner for a monthly salary of Rs.4000/- per month on a mini lorry bearing No. ADD 1962 owned by Opposite Party No.1, for which, Opposite Party No.2 issued a policy covering the risk of the applicant. The applicant sustained injury on 24.03.2005



while he was attending the duty. The Opposite Party No.1, who is the owner of the offending vehicle, did not choose to contest the matter.

4. The Opposite Party No.2/Insurance company filed its counter denying material averments made in the application, *inter alia* contending that the driver had no valid driving license to drive the offending vehicle, and that no appropriate premium was paid to the vehicle to ply on the road, and as such, the Opposite Party No.1 violated the terms and conditions of the policy therefore, they are not liable to pay any compensation.

**5. Enquiry before the learned Commissioner:**

During the enquiry before the learned Commissioner, the applicant was examined as AW.1, who reiterated the contents in the Petition in his chief examination. Apart from examining himself, the applicant also examined the Doctor, who treated him after the accident, as AW.2. Though the owner did not file Counter, he deposed as AW.3 supporting the claim of the applicant. He categorically stated that the vehicle was insured



with Opposite Party No.2, and accordingly, the insurance company is liable to pay compensation. The Insurance Company though filed Counter, did not choose to adduce any evidence on their behalf.

**6. Finding of learned Commissioner:**

a. The learned Commissioner on appreciation of the material and evidence on record opined that the driver possessed valid driving license and the vehicle got insurance policy, which was issued by the Opposite Party No.2.

b. The mini lorry, which is meant for transportation of the goods, cannot carry the passengers.

c. The evidence on record coupled with Ex.A.1 and A.4 would show that seven persons died and many of them sustained injuries.

d. The applicant, who is the cleaner of the vehicle, and the owner clearly violated the terms and conditions of the policy. So, the owner is liable to pay the compensation.

e. Against the claim of the applicant i.e., Rs.3,00,000/-, an amount of Rs.68,730/- was granted as compensation against the owner while exonerating the insurance company.



## **7. Grounds of Appeal:**

Aggrieved by the impugned Order, the applicant preferred the present appeal on the grounds that

- i.** the learned Commissioner failed to appreciate evidence on record in a proper perspective.
- ii.** the learned Commissioner ought to have observed that the applicant being a workmen sustained injuries during the course of employment and is entitled to get compensation of Rs.3,00,000/- against the owner as well as the insurance company.

## **8. Substantial Question of law framed by the Appellant:**

- i.** In case of violation of the conditions of the policy, whether the Opposite Party No.1 i.e., owner of the vehicle, is alone liable to pay the compensation though the Opposite Party No.2 failed to place any evidence in proof of their contention on the point of violation of the conditions of the policy?
- ii.** Whether the applicant is entitled for compensation of 100% under Section 2 (1) of Workmen Compensation Act?

**9.** Heard both the counsel. Perused the material on record.



**Arguments advanced at the Bar:**

10. Learned counsel for the Appellant would submit that even in the case of violation of any conditions of the policy, the applicant being a worker can claim the compensation under Workmen Compensation Act and he cannot be deprived of getting compensation from the insurance company. Learned counsel further submits that Opposite Party No.2 though filed Counter failed to prove anything supporting their contention in the evidence. Such being the case, the insurance company cannot be exonerated from the liability and the Applicant is entitled for interest on the claim amount.

11. Refuting the above arguments, the learned counsel for the Opposite Party No.2 would submit that there are no grounds to interfere in the impugned award so far as the liability against the insurance company and that they need not establish the violation of conditions of the policy when they are very much apparent on record.



**12. Substantial question of law framed in the appeal:**

In the light of rival submissions made, the substantial question of law that would arise for determination in this appeal are:

- i.** Whether the learned Commissioner is correct in exonerating the liability of Opposite Party No.2 for violation of the conditions of the insurance policy by the Opposite Party No.1?
- ii.** Whether the learned Commissioner is correct in granting compensation without any interest? and
- iii.** Whether the applicant is entitled for the compensation on 100% disability on the ground that he lost his earning capacity?

**13. Point No.1:**

This Court finds some force in the argument of the learned counsel for the Opposite Party No.2. The reason being in the impugned Order, there is a clear finding that the First Information Report-Ex.A.1 and the Charge Sheet-Ex.A.3, which were the documents filed by the applicant himself would show that it is a Mini Lorry, meant for goods carrier, and they cannot carry the passengers. Whereas several persons sustained injuries apart from seven deaths in the accident. Such being the case, the argument of the appellant that the burden is on the





insurer to prove violation of conditions of policy holds no water. The owner as well as the applicant being the cleaner of the vehicle having complete knowledge that it is a goods carrying vehicle, lifted the persons in that vehicle, resulting the accident.

**14.** In view of matter of having complete knowledge and violating the terms of policy, it is not a fit case to exercise the discretion to order pay and recovery. Accordingly, this Point is answered.

**15. Point No.2:**

There is merit in the arguments of the learned counsel for the appellant that the applicant/appellant is entitled to have interest from the date of accident till the date of realization. As seen from the impugned Order, there is no whisper regarding the interest. In support of his contention, the learned counsel placed reliance on the Judgment of the Hon'ble Apex Court in *Saberabibi Yakubhai Shaikh and others v National Insurance*



***Company Limited and others***<sup>1</sup>, wherein it is held in para No.11 (12) as follows:

*“ In the light of the decisions in Pratap Narain Singh Deo, 1976 ACJ 141 (SC) and Valsala K, 2000 ACJ 5 (SC), it is not open to contend that the payment of compensation would fall due only after the Commissioner’s Order or with reference to the date on which the claim application is made. The decisions in Mubasir Ahmed, 2007 ACJ 845 (SC) and Mohd. Nasir, 2009 ACJ 2742 (SC), insofar as they took a contrary view to the earlier decisions in Pratap Narain Singh Deo and Valsala K. do not express the correct view and do not make binding precedents.*

*In view of the aforesaid settled proposition of law, the appeal is allowed and the judgment and order of the High Court is set aside. The appellants shall be entitled to interest at the rate of 12 per cent from the date of the accident”.*

**16.** In ***Ajaya Kumar Das and another v Divisional Manager and Another***<sup>2</sup> it is clearly held at para No.5 that the interest at the rate of 12% p.a. need to be awarded from the date of accident, but not from the date of award. In the light of the judgments referred supra, the applicant is entitled to have interest over the compensation amount from the date of accident till the date of realization at the rate of 12% per annum.

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<sup>1</sup> 2014 ACJ 467

<sup>2</sup> 2022 Live Law (SC) 102

**Point No.3:**

17. Though the applicant has taken the plea of 100% disability did not choose to file any document in proof of the disability issued by the Medical Board. The doctor, who was examined to speak about the treatment of the applicant as AW.2 opined that the percentage of disability could not be fixed. Such being a case, in the absence of any material to support the claim of the applicant, the impugned Order does not brook any interference of this Court in an appeal. Accordingly, the Point is answered.

18. Accordingly, the Civil Miscellaneous Appeal is partly allowed. The impugned Order is modified to the extent of granting interest at 12% p.a., from the date of accident till the date of realization against the Opposite Party No.1/Owner. The rest of the impugned Order of the learned Commissioner shall stand confirmed. In the circumstances of the case, both parties shall bear their own costs.



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

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**VENKATA JYOTHIRMAI PRATAPA, J**

Date : 15.02.2023  
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**HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI  
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