

# **SUPREME COURT OF INDIA**

Mallamma (Dead) by Lrs.

Vs.

National Insurance Co.Ltd.

C.A.No.1391 of 2009

(P.Sathasivam CJI., S.A. Bobde and N.V.Ramana JJ.)

07.04.2014

## **JUDGMENT**

**N.V. RAMANA, J.**

1. This appeal by special leave is directed against the impugned judgment and order dated 10th August, 2005 passed by the High Court of Karnataka in M.F.A. No. 3842 of 2003 whereby the High Court partly allowed the appeal preferred by the Respondent No. 1—National Insurance Company discharging it from the liability of payment of compensation to the claimants— Appellants.

2. The brief facts of the case leading to this appeal are that on 3rd April, 1997 at about 1.00 p.m., when Honniah @ Dodda Thimmaiah was returning from the field driving a tractor with the sand load on the trailer, the tractor overturned and Honnaih @ Dodda Thimmaiah died owing to the injuries sustained in the accident. Appellants herein are the claimants—legal representatives of the deceased Honniah @ Dodda Thimmaiah. The tractor involved in the accident had the registration number KA 18/717-718 and the tractor was originally registered in the name of one Gangadhara (Respondent No. 3) and the same was insured with the Respondent No. 1 while the deceased was employed as a driver with the Respondent No. 2-Jeeva Rathna Setty.

3. On 4th September, 1997, the legal representatives of the deceased, filed an application before the Commissioner for Workman's Compensation, Chickmagalur

(hereinafter referred to as “the Commissioner”) claiming compensation under the Workmen’s Compensation Act.

4. The Commissioner while issuing notices to the respondents called for filing of objections, if any. The respondents filed objections denying their liability to pay compensation. The National Insurance Company (Respondent No. 1) deposed before the Commissioner that as per its records on the date of accident, the vehicle was no doubt under the insurance policy but in the name of Gangadhara, not in the name of Jeeva Ratna Setty, hence there is no relation of employee-employer between the deceased and Gangadhara and therefore, it has no burden of liability to pay compensation to the claimants.

5. After hearing parties and perusing the documents brought on record, the Commissioner came to the conclusion that the deceased was employed with Jeeva Rathna Setty, hence there is an employee-employer relationship between the deceased and the Respondent No. 1 and the deceased had died during the course of his employment. At the time of accident, the age of the deceased was determined as 25 years with a monthly earning capacity of Rs.2,000/- p.m. and thereby the Commissioner fixed compensation at Rs.2,16,910/-. As the Insurance Company did not deposit the amount, the Commissioner awarded an interest @ 12% p.a. from 3rd April 1997 till the date on which he passed the order, i.e. 14th February, 2003, which amounted to Rs.1,50,265/- and ordered that the appellants are entitled to receive a total compensation of Rs.3,67,275/- from the employer Jeeva Ratna Setty and the Insurance Company. Finally, by the Award dated 28th February, 2003, the Commissioner held that though the insurance policy was in the name of Gangadhara, the ownership of the vehicle on the date of accident was with the Jeevaratna Setty; it is proved that during the validity period of the said insurance policy, the said vehicle was transferred from Gangadhara to Jeevaratna Setty; as per Section 157(1) of the Motor Vehicles Act, 1968 whenever a vehicle is transferred from one person to another, the benefits of the insurance policy shall also be transferred to the new owner; accordingly instant policy benefits will also be automatically transferred from Gangadhara to Jeevaratna Setty. Therefore, the National Insurance Company shall be liable to pay the compensation and interest thereupon to the claimants. Accordingly, the Commissioner fixed the liability of paying compensation on the Insurance Company and Jeeva Ratna Setty individually and severally and directed them to deposit the amount within a period of 30 days from the date of the Award failing which they shall further be liable

to pay interest @ 9% p.a. for the delayed period. The Commissioner, however, discharged Gangadhara (Respondent No. 3) and Laxmana Bhovi, (Respondent No. 4) from the case.

6. Aggrieved by the said order of the learned Commissioner, the Insurance Company (Respondent No. 1) filed M.F.A. No. 3842 of 2003 before the High Court of Karnataka urging that no liability could have been fastened by the Commissioner on the Insurance Company.

7. The High Court, by the impugned order, affirmed the findings of the Commissioner that (i) the deceased workman was actually employed with Jeeva Rathna Shetty, and therefore, there is a relation of employee- employer between them; (ii) the deceased workman having died as a result of an accident arising out of and in the course of employment, hence the claimants as legal representatives of the deceased are entitled to recover compensation, (iii) there was a valid insurance policy in force on the date of accident (iv) and the original owner of the tractor was Gangadhara. However, the High Court excluded the liability of the Insurance Company on the ground that the contention of deemed transfer of the insurance policy in favour of Jeeva Rathna Setty by virtue of Section 157 of M.V. Act was not actually urged before the Commissioner.

8. Against the Judgment of the High Court relieving the Insurance Company from the liability of payment of compensation, the claimants are before this Court in this appeal.

9. We have heard learned counsel for the parties and perused the material on record.

10. Before us, learned counsel for the appellants relying upon Section 157 of the M.V. Act, contended that there is an admitted transfer of ownership of the vehicle as proved before the Commissioner. Once the ownership of the vehicle is admittedly proved to have been transferred to Jeeva Rathna Setty, the existing insurance policy in respect of the same vehicle will also be deemed to have been transferred to the new owner and the policy will not lapse even if the intimation as required under Section 103 of the M.V. Act is not given to the insurer, hence the impugned order passed by the High Court is contrary to law. In support of this contention, learned counsel for the appellant has relied upon a judgment of this Court in G. Govindan Vs. New India Assurance Co. Ltd. (1999) 3 SCC 754.

11. Learned counsel has also brought to our notice a relevant portion from the 'Schedule of Premium' of the insurance policy, a copy of which is available on record as Annexure P-1., which reads thus: |B. |LIABILITY TO PUBLIC RISK |Rs. 120-00 |  
| |Liability to Tractor |Rs. 87-00 | | | | |Add: |for L.L. to persons employed in |Rs. 15-00  
| | |Connection with the operation and/ | | | |or loading of vehicle (IMT 19) | | | | | | | | | |  
|Add: |for increased third party property |Rs. 75-00 | | |damage limits. Section II-I(ii) | |  
| |upto Rs. Unltd. IMT 70 | | | | | | | |TOTAL PREMIUM (A +B) |Rs. 1318-00 |

12. On the other hand, learned counsel for the National Insurance Company, mainly contended that unless it is proved by evidence that the vehicle has been transferred in the name of Jeeva Rathna Setty, the deeming provision of Section 157 of the M.V. Act would not be applicable. In the absence of such evidence on record the High Court has rightly absolved the Insurance Company from the liability and the order passed by the High Court does not require any interference from this Court.

13. The counsel for the Insurance Company of course contended that as per their records, on the date of accident, the vehicle was registered in the name of Gangadhara. Hence in the absence of a valid proof that the ownership of the vehicle has been transferred in the name of Jeeva Ratna Setty, the benefits of insurance policy cannot be given to Jeeva Ratna Setty. However, the said contention is contrary to record. A specific finding by the Commissioner to this effect in his order dated 28th February, 2003 reads thus:

“The 4th respondent had stated that on the date of the accident, this vehicle was in the name of Sh. Gangadhara. But the applicants have proved the said statement as false through documents and on the date of the accident, the vehicle was in the name of the Respondent No.1.”

14. In view of the above finding, it can be discerned that on the date of accident, the ownership of the tractor stood transferred from Gangadhara to Jeeva Ratna Setty. In addition to that, a perusal of the 'Schedule of Premium' extracted above shows that an amount of Rs.15-00 has been paid as premium “for L.L. to persons employed in connection with the operation and/or loading of vehicle (IMT 19)”.

15. In view of the above discussion we are of the considered view that as on the date

of accident, the deceased workman was in the course of employment of Jeeva Rathna Setty in whose name the ownership of the vehicle stood transferred and the said vehicle was covered under a valid insurance policy, the High Court ought not have simply brushed aside the decision of the Commissioner fastening joint liability on the Insurance Company in the light of the deeming provision contained in Section 157 (1) of the M.V. Act.

16. For the foregoing reasons, we allow this appeal, set aside the impugned judgment passed by the High Court and restore the judgment of the trial Court.

17. There shall, however, be no order as to costs.