

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.325 of 2015

JUDGMENT:-

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This Appeal by the appellant/second opposite party under Section 30 of the Workmen's Compensation Act presently known as the Employees' Compensation Act, 1923 ('the Act', for brevity) is directed against the order dated 03.02.2015 of the learned Commissioner for Employees Compensation and the Deputy Commissioner of Labour-I, Hyderabad passed in W.C.No.57 of 2011.

2. I have heard the submissions of the learned counsel for the appellant/second opposite party ('the second opposite party', for brevity) and the learned counsel for the respondents/applicants 1 to 8 ('the applicants', for brevity). None appeared for the ninth respondent/the first opposite party, though he is served with notice. I have perused the material record.

3. The facts that lead to the filing of this appeal, in brief, are as follows:

3.1 The applicants had filed a compensation case claiming compensation under the provisions of the Act against the opposite parties for the loss sustained by them due to the untimely death of the deceased D.Yadaiah ('the deceased', for brevity) out of and during the course of his employment as the driver of the lorry bearing registration no. AP 09 U 4353 belonging to the first opposite party/employer, which was insured with the second opposite party/insurer. The first opposite party had filed a counter accepting the employee-employer relationship and supporting the case of the applicants. The second opposite party had filed a counter and resisted the claim.

3.2 The learned Commissioner had framed the following issues:

1. **Whether the deceased died during the course and out of his employment due to the injuries sustained by him in the accident as a driver under the employment of the 1st opposite party?**
2. **If yes, who are liable to pay compensation to the dependants of the deceased? And;**
3. **What is the amount of compensation entitled by the dependants of the deceased?**

3.3 At trial, the first applicant, who is the wife of the deceased, was examined as AW1 and exhibits A1 to A6 were marked on the side of the applicants. The first opposite party was examined as RW1 and a copy of his Aadhar card was marked as exhibit B1. The Senior Assistant of the Road Transport Office, Ibrahimpatnam, was examined as RW2. Exhibits B2, B3 and B4 were also marked. Exhibit X1 is the letter of authorization produced by RW2 who had deposed on behalf of the second opposite party. An officer of the Road Transport Office, Atthapur, and a Senior Legal Executive of the second opposite party were also examined as RWs 3 and 4 and the authorization letter authorizing RW3 to give evidence is exhibited as exhibit X2.

3.4 On merits, the learned Commissioner had awarded a compensation of Rs.6,14,549/- with interest at the rate of 12% per annum from 08.03.2011 till the date of realization and directed the opposite parties 1 and 2 to deposit the same by means of a demand draft in favour of the Commissioner for Employees' Compensation and the Deputy Commissioner of Labour – I, Hyderabad within thirty days from the date of the receipt of a copy of the said order. Aggrieved of the said orders, the second opposite party had preferred this appeal.

4. The learned counsel for the second opposite party would contend as follows: “There is no nexus between the incident in which the deceased died and the employment of the deceased; The death of the deceased did not occur out of and during the course of his employment; The deceased, who was said to be the driver of the lorry belonging to the first opposite party did not possess a valid and effective driving license as on the date of the alleged accident and, therefore, there is a fundamental breach of the provisions of the subject Act and the Motor Vehicles Act, 1988 (M V Act) and also the terms and conditions of the insurance policy under which the said lorry was insured; Except the self-serving statement of AW1, there is no other evidence to prove that there was an accident and that the deceased fell in a well and had died while fleeing away from the scene of offence to avoid the

rage of the mob; There is collusion between the applicants and the first opposite party; The insured vehicle was falsely implicated in the crime to enable the applicants to make a wrongful gain at the expense of the insurance company; If really there was an accident and in the said accident, if any person had sustained injuries as alleged, and the deceased who had caused the accident had run away from the spot in order to avoid a mass attack from the public in general, it would not have taken a huge delay of 29 days for the accident to come to the notice of the owner of the vehicle and the police; Even assuming for a moment that there was an accident caused by the deceased while driving the vehicle and that he had run away from the scene of offence after causing the accident, a crime ought to have been registered immediately on the same day or within a reasonable time, as admittedly the deceased left the lorry on the road at the accident spot after causing the accident and had fled away from the scene of offence; but, strangely, no crime was registered till 29 days; If really the deceased was on duty as driver on the lorry on 05.02.2011 and he was not traced and when his whereabouts were not known for about nearly one month after the alleged accident involving the lorry, the first information report should have been lodged with the police concerned about the missing of the driver of the lorry/the deceased either by the wife of the deceased or the owner of the lorry; When the lorry was allegedly left at the accident spot after the accident, there was no need or necessity to wait for the period of 29 days for lodging a complaint; A complaint ought to have been lodged at least by the injured person; but, no such complaint was lodged by any such injured person or his relative or an eye-witness. The lodging of the complaint with the police on 03.03.2011 is only an afterthought; The vehicle was also being used without valid Fitness Certificate; The learned Commissioner had failed to appreciate the facts and the circumstances of the case in proper perspective and had erroneously fastened the liability on the second opposite party; The learned Commissioner ought to have seen that the second opposite party had denied the case of the applicants by contending that the deceased was not the driver of the lorry belonging to the first opposite party; In any view of the matter, there is no nexus between the incident in which the deceased died and the

alleged accident; The death of the deceased had not occasioned out of and during the course of his employment under the first opposite party; The entire story of the applicants is concocted and fabricated in collusion with the first opposite party to enable the applicants to make a wrongful gain; Further, the deceased was not possessing valid license which authorized him to drive the lorry and the vehicle is not having Fitness Certificate; Therefore, there is violation of the provisions of the M V Act and the subject Act as well as the terms and conditions of the insurance policy; The claim is totally based on a false and concocted story; The learned Commissioner was not competent to entertain the application as the provisions of law are not attracted to the case on hand.”

5. On the other hand, the learned counsel for the applicants, while supporting the order of the learned Commissioner, which is impugned, had contended as follows: “The Commissioner had framed three issues after taking into consideration the pleadings of both the parties. The learned Commissioner had discussed at length, the oral and the documentary evidence, and had adverted to the legal position, which is applicable and relevant to the facts of the case. The learned Commissioner had answered the issues in favour of the applicants after recording cogent and valid reasons. When the Commissioner recorded a finding on fact after considering all the aspects of the matter and when no substantial question of law is involved, the appeal is not maintainable. All the contentions which are now raised by the second opposite party were adverted to and sufficiently considered by the learned Commissioner before passing the order awarding compensation. The second opposite party is not entitled to again raise the self-same contentions before this Court and hence, the appeal is liable to be dismissed. The licence was lost at the time of the accident and could not be traced from the dead body of the deceased, which was found in a Well, as by the time of the inquest the body was totally decomposed. As per law and the evidence brought on record, the licence can be obtained by any citizen from any Regional Transport Authority concerned. Therefore, the evidence of the witnesses called from one particular Regional Transport office to the effect

that their office records would not show that a licence was issued to the driver of the lorry and that the deceased had no licence authorizing him to drive the lorry is not going to advance the case of the 2nd opposite party. There is no reason for the deceased to commit suicide by jumping into a Well. The 2nd opposite party did not summon the Investigating Officer and cross-examine him to prove its defence or disprove the case of the applicants. Till the dead body was traced from a Well that was in disuse, there was no reason to lodge the first information with the police. The law is well settled that for mere delay in lodging the report, the compensation case cannot be thrown out. The learned Commissioner had referred to a decision on the relevant aspect of delay in lodging the FIR and had held that the case pleaded in the claim petition is true. Hence, the impugned order does not call for any interference. The applicants are the legal heirs of the deceased, who is the sole bread earner of the family. The large family of eight applicants has no source of income. The enactment which is a beneficial enactment was enacted with an avowed objective of providing compensation to the legal heirs of the deceased employee and give them some means for their sustenance and upkeep. Therefore, this Court may not interfere with the impugned order.”

6. In view of the above rival contentions, the points that arise for determination in this appeal are:-

1. **Whether the incident in which the deceased was stated to have died has no nexus with his alleged employment as driver on the lorry bearing registration no. AP 09 U 4353 of the first opposite party, which is insured with the 2nd opposite party?**
2. **Whether the deceased having caused the accident with the said lorry, which he was driving, had died on account of his fall into a well, which is in disuse, while fleeing away from the scene to escape from the rage of mob that had gathered at the scene of accident? And if so, whether it is possible to hold that his death had occasioned out of and during the course of his employment under the first opposite party, who is the owner-cum-insured of the said lorry?**
3. **Whether in the facts and circumstances of the case stated by the second opposite party, the learned Commissioner had erred in entertaining the application of the applicants and in awarding compensation to them and in fastening the liability on the second opposite party?;**
4. **Whether the impugned order is unsustainable under facts and in law and is liable to be set aside?**

7. POINTS:

7.1 To begin with, it is necessary to refer to the case of the applicants, which is relevant and which is as follows:

The deceased was employed as the driver on the lorry of the 1st opposite party which was insured at the relevant time with the 2nd opposite party. On 05.02.2011, while the deceased was driving the said lorry and was proceeding from Ovipally village towards Hyderabad with a load of firewood; and, on the way, when the lorry reached a place near Nirich Mond Hotel, the deceased had dashed his lorry against one person by name Satyanarayana. On noticing that the said person had sustained injuries, the deceased had stopped his lorry in front of the said hotel. He had run away from the accident spot out of fear and to avoid any attack from the people who are nearby the scene of accident. While escaping from the scene of accident, he fell in a Well in a field, which is in disuse, as he could not observe the Well in the darkness of the night. His dead body was traced only on 03.03.2011 as nobody saw the dead body lying in the Well for quite some time. Further, some more time was taken in finding out the relatives of the deceased. On tracing of the dead body by a villager and on the information received by the family of the deceased, a report was lodged with the Station House Officer, Nacharam Police Station and a case in Crime No.29 of 2011 was registered and was investigated into. Thus, the death of the deceased had occasioned out of and during the course of his employment as a driver on the lorry of the 1st opposite party, which was insured with the 2nd opposite party.

7.2 The 1st opposite party having filed a counter had admitted the employer and employee relationship between him and the deceased and also the age and the wage of the deceased, besides the manner of accident pleaded by the applicants and had thus supported the case of the applicants and had *inter alia* urged that the 2nd opposite party with which the lorry was insured under a valid policy is liable to pay the compensation. It is alternately contended in the concluding line of paragraph 5 of the counter that the applicant (*sic* deceased) was removed from service even prior to the accident

as he was unable to perform his duties and that therefore, the application may be dismissed.

7.3 The 2nd opposite party had filed a detailed counter adverting to the provisions of law under the Act and the non-compliance of the mandatory provisions in regard to giving of notice and information about the accident to the 2nd opposite party and denying the case of the applicants in all respects. It is mainly contended that the deceased was not a driver on the subject lorry and that he was not employed under the 1st opposite party and that the manner of the accident pleaded by the applicants is false and that the manner of the accident pleaded discloses that there is no nexus between the death of the deceased and the alleged accident and that the deceased also did not possess a valid driving licence to drive the lorry as on the date of the accident and that the vehicle was also not having a valid permit and that therefore, no compensation is awardable to the applicants and that their application is liable to be dismissed and that the insurance company cannot be saddled with any liability to pay the compensation.

7.4 PW1 had affirmed the pleaded case in her affidavit filed in lieu of examination-in-chief. In her evidence, the copy of the FIR, the copy of the inquest report, the copy of the Post Mortem Examination report, the Photostat copy of the RC of the vehicle, the Photostat copy of permit of the vehicle and the copy of the final report in the crime were exhibited as exhibits A1 to A6. She is admittedly not an eyewitness to the accident/ incident. The 1st opposite party who was examined as RW1 is also not an eye witness to the accident/incident. Similarly, RWs 1 to 4 are also not eyewitnesses to the incident. RWs 2 and 3 were examined in support of the defence that the deceased did not possess a valid driving licence. RW4 is the officer of the insurance company and he had reiterated in his evidence the defence of the insurance company. The copy of the insurance policy in respect of the subject lorry was exhibited as exhibit B2.

7.5 I have gone through the pleadings and the oral and documentary

evidence. The crime was registered on the information given by one Lingamaiah of Agrapalli village. He is no other than the father of the deceased. According to the contents of his report, on 05.02.2011, the deceased was driving the lorry loaded with firewood from Ovrupally towards Hyderabad and that at about 09.45 PM, he had dashed the lorry against one Satyanarayana and had later stopped the lorry on the side of the road and at a distance and had fled away from the scene and had fallen into a Well that was in disuse and that being unaware of the same, he and the owner of the lorry and also the relatives of the deceased had searched for him and that on 03.03.2011, from a villager, they had come to know that a dead body was lying in a Well in the land of Karri Anjaiah and that on that they had proceeded to the Well and that he had identified the dead body as that of his 2nd son and had come to know that while the deceased was fleeing away from the scene of accident, the deceased had accidentally fallen into the Well, which is in disuse and which is situate at a distance of 100 yards from the scene of accident. The copy of the inquest report also contains the opinion of the inquestdars which is on similar lines. The copy of the Post Mortem Examination report of the deceased discloses that the cause of death is poly-trauma and asphyxia. After investigation, police had filed a final report on similar lines. In the final report, it is stated that in the accident caused by the deceased, one Satyanarayana has received simple injuries. The copy of the final report exhibited does not show as to who are the witnesses examined during the course of investigation. Admittedly, the first information report which set the criminal law into motion was lodged with the police on 03.03.2011, whereas the accident/incident was said to have occurred on 05.02.2011 at 09.45 PM. Thus, there is a long delay of one month in lodging the report. Therefore, the evidence requires careful scrutiny before coming to a safe conclusion on the issues involved in the matter.

7.6 It is not in dispute that the initial onus of proof and the legal burden are on the applicants to prove their pleaded case and their entitlement to compensation. It is for them to prove the manner of accident and the incident in which the deceased had died and the nexus between the accident/incident

and the cause of death and that the death had occasioned out of and during the course of the employment of the deceased as a driver on the lorry of the 1st opposite party. As already noted, none of the witnesses examined are eye witnesses to the accident and also the incident, viz., the fall of the deceased in a Well, which was under disuse and which was situate at a distance of 100 yards from the scene of the accident. Even the first informant is not an eyewitness to the accident/ incident. In the accident caused by the deceased with his lorry, one Satyanarayana was said to have received injuries. Not even his name with surname, father's name and other details are mentioned anywhere including the crime records. The said Satyanarayana was said to have sustained simple injuries. If that is so, there is no need for the deceased driver to entertain any apprehensions of attack by the persons who had gathered at the scene of accident and flee away from the scene. He had admittedly left the lorry at a little distance from the scene of accident and had fled away. He was not traced and his whereabouts were not known for a month, i.e., till his dead body was found in a Well. Neither the injured lodged a report with the police nor had the police registered a crime on the same day or within a reasonable time having received information from any source. When the lorry was left on the road after the alleged accident and when neither the lorry nor the driver were traceable and when the driver did not report with the lorry at the destination or at the place of the 1st opposite party, who is the owner of the lorry, he ought to have lodged a report within a reasonable time. He did not do so. Generally, on a lorry carrying load on a highway, there will be a cleaner accompanying the driver. However, there is no whisper in any record about the cleaner, if any, on the lorry. When the lorry was left at the scene after an accident and when the driver has not reported to the owner and also did not return to his house, a report ought to have been lodged within a reasonable time by his family members. They also did not lodge a report till the dead body was traced. The villager who had first noticed the dead body of the deceased in the Well and had given information to the family of the deceased was not examined. Except examining AW1, who is not a material witness, no other witness was

examined to discharge the initial onus of proof and prove the manner of accident/incident pleaded by the applicants and the cause of death of the deceased and its nexus to the employment. The first informant who is no other than the father of the deceased was also not examined. When one person was injured in the accident and the deceased had fled away from the scene having caused the accident and when no crime was registered till the dead body of the deceased driver was traced from a Well it remains unexplained as to how the name of the injured person has come to the knowledge of the 1st informant. Therefore, mere examining AW1 and marking the copies of crime records as exhibits, by no means, is sufficient in a case of this nature in which the facts are peculiar and there is an inordinate delay of 30 days in lodging the report and the registration of the crime. All these circumstances create any amount of doubt about the manner of accident/incident pleaded by the applicants and the cause of death of the deceased and its nexus to his employment. No explanation is forthcoming for not examining any material witness. This Court could have given some credence to the final report had there been a reference therein to the names of the witnesses examined and the summary of their statements in support of the opinion arrived at by the Investigating Officer. There is no whisper in the final report as to who are the witnesses examined and also the summary of their statements, which had incited the investigating officer to formulate an opinion as mentioned in the final report. Hence, in the peculiar facts of the case, this Court is of the considered view that it is not safe to place reliance on the recitals in the crime records as there is any amount of doubt and suspicion in regard to the case pleaded by the applicants and its truthful nature as no iota of evidence much less legal evidence worth placing reliance was adduced to dispel the doubts and remove the suspicion.

Therefore, there is absolutely no evidence much less legal evidence worthy of credit to safely hold that the applicants proved the manner of accident and the incident resulting in the death of the deceased and the nexus between the cause of death and the employment. Hence, in the facts and circumstances, when the initial onus of proof, which is upon the applicants is not discharged,

the insurance company/2nd opposite party cannot be found fault for not examining the investigating officer. It is no doubt true that merely on the ground of delay in lodging the FIR the applicants' case need not be doubted and there is no dispute with the settled legal position on this aspect. However, in the case on hand, for all the reasons adverted to supra and the finding that there is no evidence much less legal evidence worthy of credit in proof of the accident and the subsequent incident pleaded by the applicants, it is not possible to accept the version of the applicants. Therefore, this Court is constrained to hold that the applicants could not prove that the cause of death of the deceased is an accident/incident arising out of and in the course of his employment as the driver on the lorry of the 1st respondent. Looking at the facts and evidence and having gone through the order impugned, this Court finds that the learned Commissioner ought not to have held that the deceased had died in an accident/incident which had nexus with his employment as driver on the subject lorry. The said finding which was recorded by the learned Commissioner without any support from the evidence much less legal evidence brought on record is therefore, unsustainable. As a sequel, it must be held that there is no reliable evidence to hold that the deceased died out of and during the course of his employment under the 1st opposite party.

8. Therefore, this Court finds that there is acceptable merit in the contentions of the second opposite party. Even though the legislation is a beneficial legislation and is made with an avowed objective to benefit the injured employees and the legal heirs of the deceased employees, merely taking into consideration the object of legislation no compensation can be awarded in the absence of the applicants establishing even a semblance of case showing their entitlement to the relief. For all the aforementioned reasons the appeal deserves to be allowed and the impugned order is liable to be set aside. As a sequel, it must be held that the applicants are not entitled to claim any compensation from the 2nd opposite party/insured and that no liability can be fastened against the 2nd opposite party to pay the compensation to the claimants. In view of the findings disbelieving the

version of the applicants in regard to the cause of death and its nexus to the employment of the deceased under the 1st opposite party, no liability also can be fastened on the 1st opposite party as well. Hence the application is liable to be dismissed against both the opposite parties. The points are answered accordingly against the applicants and in favour of the appellant/2nd opposite party.

9. In the result, the appeal is allowed without costs and the order dated 03.02.2015 of the learned Commissioner for Employees Compensation and the Deputy Commissioner of Labour – I, Hyderabad passed in W.C.No.57 of 2011 is set aside and the said case is dismissed without costs.

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

M.SEETHARAMA MURTI, J

19th August 2015
BVV