

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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C.M.A.No.566 of 2015

JUDGMENT:

This appeal by the 2nd opposite party under Section 30 of the Workmen's Compensation Act, 1923 is directed against the order dated 19.12.2014 of the learned Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Nalgonda passed in W.C.No.69 of 2012.

2. I have heard the submissions of the learned counsel for the appellant/2nd opposite party ('the 2nd opposite party', for brevity) and the learned counsel for the respondents/applicants 1 to 3 ('the applicants', for brevity). None appeared for the 4th respondent/first opposite party. I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:-

The applicants, who are the wife and children of the deceased-Rama Chary had filed a WC case claiming compensation of Rs.8,00,000/- under the provisions of the Workmen's Compensation Act, 1923 presently known as Employees' Compensation Act, 1923 ('the Act', for short) against the employer-1st opposite party-cum-owner of the lorry bearing no. AP 24 W 3427 and the 2nd opposite party-cum-insured of the said vehicle claiming *inter alia* that the deceased had succumbed to the injuries on 13.04.2012 while he was discharging his duties as driver out of and during the course of his employment under the 1st opposite party.

3.1 The 1st opposite party had remained *ex parte* before the learned Commissioner. The 2nd opposite party had filed a counter resisting the claim of the applicants.

3.2 At trial, AW1 was examined and exhibits A1 to A5 were marked on the

side of the applicants. No oral evidence was adduced on the side of the opposite parties 1 and 2. Exhibit B1, the certified copy of the insurance policy issued in favour of the 1st opposite party in respect of the lorry bearing no. AP 24 W 3427 was marked.

3.3 On merits, the learned Commissioner had awarded a total compensation of Rs.5,75,185/- to the applicants in all recoverable from both the opposite parties and had directed that the said compensation be deposited by means of a demand draft drawn on any Nationalised Bank in favour of the Commissioner for the Workmen's Compensation and the Assistant Commissioner of Labour, Nalgonda within 30 days from the date of the receipt of a copy of the order. It was further held that on failure to so deposit, the applicants shall be entitled to interest at 12% per annum on the compensation amount from 14.05.2012.

3.4 Feeling aggrieved of the said orders, the 2nd opposite party had preferred this appeal.

4. The learned counsel for the 2nd opposite party had contended as follows:-

The learned Commissioner had failed to appreciate that the 2nd opposite party has no liability to pay any compensation to the applicants as the deceased had died having fallen down from the vehicle and that the vehicle was not in motion at the time of the accident. Therefore, the accident did not arise out of and during the course of the employment. The alleged death has no nexus with the employment. The insurance company has not admitted the employer-employee relationship between the 1st opposite party and the deceased. The relationship was not established by the applicants. Therefore, the death of the deceased does not come within the purview of the provisions of the Act. Hence, the impugned order is liable to be set aside.

5. Per contra, the learned counsel for the applicants while supporting the order had stated that the applicants proved not only their relationship with the

deceased but also the relationship of the deceased as an employee with the 1st opposite party (employer) and that the oral and documentary evidence brought on record sufficiently established the incident in which the deceased had died out of and during the course of his employment and that the learned Commissioner having framed three issues had adverted to the facts accurately and the oral and documentary evidence in the right perspective and had recorded reasoned findings on the issues framed before awarding compensation; and, no substantial questions of law are involved in the appeal; and, hence, the appeal is devoid of merit and is liable to be dismissed.

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

1. Whether there exists employee-employer relationship between the deceased and the 1st opposite party?
2. Whether the deceased had died on account of the injuries sustained in the accident that had occurred on 13.04.2012 out of and during the course of his employment as a driver under the 1st opposite party?
3. Whether the order of the learned Commissioner is unsustainable?
4. To what relief?

7. POINTS:

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7.1 The case of the applicants is this: 'The deceased was a driver on the subject lorry of the 1st opposite party, which is insured with the 2nd opposite party. On 13.04.2012, the deceased was on duty as driver on the said vehicle. Having proceeded on the said lorry from Mallareddigudem village with a load of chillies to Guntur Town, he had stopped the lorry, on the way, at Chinthiryala village at Ballakattu to cross the canal by means of Ballakattu. As there was time for the Ballakattu to arrive, the deceased had got down from the lorry. While boarding the cabin at about 11 PM in order to take rest,

he had accidentally fallen down from the cabin and had sustained injuries on his head and other parts of the body. Therefore, he was shifted to Government Hospital, Khammam. He had succumbed to the injuries on 15.04.2012 while undergoing treatment in the said hospital. As a consequence, the applicants are entitled to compensation from both the opposite parties. The deceased was 38 years of age and was being paid a wage of Rs.10,000/- per month at the time of the accident.' As already noted, the 1st opposite party has remained *ex parte* and the insurance company/2nd opposite party had filed counter resisting the claim mainly stating that there is no relationship of employer and employee between the 1st opposite party and the deceased and that and that there is no nexus between the accident in which the deceased sustained injuries and his duty as a driver.

7.2 AW1, who is the wife of the deceased while deposing in line with the pleaded case had exhibited the certified copies of the FIR in Crime No.69 of 2012 of Mellacheruvu Police Station, the inquest report, the post-mortem examination report and the charge sheet and also the copy of the driving licence of the deceased as exhibits A1 to A5. She is admittedly not an eye witness to the accident. No oral evidence was adduced on the side of the 2nd opposite party. However, exhibit B1, the copy of the policy of insurance was exhibited. In the first place, in the absence of any rebuttal evidence to refute the statement of AW1 regarding the relationship, it can safely be concluded that the applicants are the legal heirs of the deceased. The crime record in the form of exhibits A1 to A5 would show that the deceased was working as a driver on the lorry bearing no. AP 24 W 3427 and that he was on duty on 13.04.2012 on the said lorry. Coming to the issue as to whether the deceased had died out of and during the course of his employment, the oral evidence of AW1 gets support from the recitals in the crime record, the details of which are stated supra. The law is well settled that when the driver gets injured during the temporary stoppage of vehicle and while getting down or into the vehicle for a *bona fide* reason, the same does not result in suspension/cessation of duty as driver driving the vehicle. The view of this Court gets reinforced from a decision of the High Court of Karnataka reported

in **Pramila and others v. Shaliwan and another**^[1] and a decision of this Court in **New India Assurance Company Limited v. Mandava Krishna Kumari**^[2]. Therefore, it can safely be held that the incident in which the deceased had sustained injuries is having nexus with his duty as a driver. It is not in dispute that the deceased had succumbed to the injuries while undergoing treatment in the hospital. Therefore, it follows that his death had occasioned out of and during the course of his employment as driver on the lorry of the 1st opposite party. The points are accordingly answered in favour of the applicants.

7.3 Dealing with the quantum of compensation, be it noted that the learned Commissioner had determined the age of the deceased having regard to the contents of the crime records and had then proceeded to determine the wage at Rs.4,319/- as per the terms of the GO, which is applicable and had accordingly arrived at the compensation, which is awardable to the claimants.

In the facts and circumstances of the case, this Court finds no error in the amount of compensation determined and awarded by the learned Commissioner. It is not in dispute before this Court that under the original of exhibit B1, the certified copy of the insurance policy, the subject vehicle was insured at the relevant time and it covered the risk of the deceased.

7.4 Having thus analysed the facts and the evidence brought on record, this Court is satisfied that the learned Commissioner is justified in answering the issues in favour of the applicants and in awarding the compensation. Viewed thus, this court finds that there is no merit in the appeal and the appeal is liable to be dismissed. The points are accordingly answered in favour of the applicants and against the 2nd opposite party/the appellant

8. In the result, the appeal is dismissed, however, in the facts and circumstances, without costs.

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

20th August, 2015
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[\[1\]](#) 2006 ACJ 890

[\[2\]](#) 2013 ACJ 376