

HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.2876 of 2004

J U D G M E N T:

This appeal is filed by the appellants/applicants under Section 30 of the Workmen's Compensation Act, 1923 (for short 'the Act'), aggrieved by the order dated 02.04.2002, passed by the Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour-I, Guntur (for short 'the Special Court'), in W.C.No.48 of 2002.

2. The appellants/applicants filed the above W.C claiming compensation of Rs.1,31,271-35ps on account of the death of one Amalakanti Chakraiah (hereinafter referred to as 'the deceased'), while he was in the course and out of his employment with opposite party No.1.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the W.C. before the Commissioner.

4. The brief averments made in the petition are that the deceased worked as C.F.Mate in C.F.Section in the sugar factory belonging to opposite party No.1. On 14.01.1999, he worked in his original shift duty i.e., from 12:00 noon to 8:00p.m and while leaving his duty, opposite party No.1 asked him to work in the next shift also as the employee concerned by name Sri V. Bullaiah was on leave due to Pongal festival. Accordingly, the deceased agreed for the same and opposite party No.1 granted him permission to freshup and have needs in his house at Zampani. After completion of his needs, while coming to the factory on his way to join the next shift, the deceased died due to snake bite. Thus, the deceased died due to snake bite, while he was in the course and out of his employment with opposite party No.1. The death of the deceased

was immediately informed to opposite party No.1 and to the Sarpanch of Zampani Gram Panchayat. The Sarpanch conducted an inquest report and certified that the deceased died due to snake bite. In spite of repeated representations to opposite party No.1, no compensation was awarded. Therefore, the applicants, who are the wife and daughter of the deceased, filed the W.C before the Special Court.

5. The brief averments made in the counter filed by opposite party No.1 are as follows:

Opposite party No.1 admits that the deceased worked as C.F.Mate in C.F.Section in the O.P establishment. On 14.01.1999, he attended the shift duty from 12:00 noon to 8:00 p.m. After completion of his shift, he left the premises as usual and he was never asked to do overtime on that day. On 15.01.1999, the deceased did not attend the factory for his regular shift and on enquiry, it was learnt that he died due to snake bite on the previous night and that the body was shifted to his native place. The fact of death was not informed to opposite party No.1. Later, an application was put up on 22.01.1999 by applicant No.1 to opposite party No.1 requesting for a job to one of her daughters on compassionate grounds and also for payment of terminal benefits of her husband. On 05.02.1999, another application was also made by opposite party No.1 requesting the management to provide employment to her would-be-son-in-law and in these applications, she never claimed that her husband died of a snake bite in the course and out of his employment. Since the snake bite was not due to an accident arising in the course and out of his employment with opposite party No.1, the applicants are not entitled to any compensation as per the provisions of the Act. However, opposite party No.1 obtained an Insurance Policy on 28.09.1998 from opposite party No.2 and the said Insurance Policy was in force from

03.8.1998 to 02.08.1999 and if at all, the Court comes to a conclusion that the deceased died during the course and out of his employment with opposite party No.1, the Insurance Company alone is liable to pay compensation and prayed the Special Court to dismiss the petition.

6. The brief averments made in the counter filed by opposite party No.2 are as follows:

Opposite party No.2 put the applicants to prove the manner of accident, death of the deceased and other contents of the petition and further stated that the deceased was not employed under opposite party No.1 at the time of his death and therefore, Insurance Company is not liable to pay compensation. The claim of the compensation is highly excessive and prayed the Court to dismiss the petition with costs.

7. Basing on the above pleadings, the Special Court framed three issues and to substantiate the claim, the applicants got examined A.Ws.1 to 4 and got marked Exs.A1 to A3 on their behalf. On behalf of the opposite parties, R.W.1 was examined and Exs.R1 & R2 got marked.

8. After considering the oral and documentary evidence, the Assistant Commissioner of Labour-I held that the applicants failed to prove that the deceased died due to snake bite, occurred in the course and out of his employment with opposite party No.1; that there is no documentary evidence to support their contention and to believe the version that the deceased was under overtime work on that day; that the evidence of A.Ws.1 to 4 is hearsay evidence and there is no direct evidence, and dismissed the case of the applicants.

9. Aggrieved by the order passed by the Assistant

Commissioner of Labour-I, the applicants preferred the present appeal.

10. The learned counsel appearing for the appellants/ applicants argued that the Assistant Commissioner of Labour-I passed the order contrary to law and evidence on record and failed to consider that the deceased was attending his assigned shift and died in the course and out of his employment with opposite party No.1; that opposite party No.1 failed to file the registers, which are in its possession, which clearly show that deceased was placed in charge of another employee, who took leave on that day; that the Assistant Commissioner of Labour-I failed to consider the evidence of A.Ws.1 & 4, resulting the manner of death of the deceased while attending his duties; that the Assistant Commissioner of Labour-I failed to consider the evidence of A.W.4, who was working as Chemist in the opposite party No.1's factory and A.W.4 clearly stated that the shift time of the deceased was from 12:00 noon to 8:00 p.m and shift time of A.W.2 is from 8:00 p.m to 4:00 a.m and admittedly, A.W.2 was on festival leave on that day and did not attend the work and the deceased was asked to continue the shift hours of A.W.2 and the Assistant Commissioner of Labour-I also failed to consider the admitted facts that deceased died while he was on the way to the factory and died due to snake bite. Therefore, prayed the Court to allow the appeal.

11. On the other hand, the learned counsel for the opposite parties vehemently opposed for allowing the appeal on the ground that the Special Court rightly considered the evidence on record and dismissed the case of the applicants and the order dated 02.04.2002 passed by the Assistant Commissioner of Labour-I needs no interference and prayed the Court to dismiss the appeal.

12. Having regard to the submissions made by the learned

counsel appearing for both parties, the point which is to be decided in this appeal is as follows:

Whether the deceased was working with the first opposite party at the time of his death and whether he died due to snake bite arising in the course and out of his employment with opposite party No.1?

13. **POINT:** As per the oral evidence produced by the appellants i.e., A.Ws.1 to 4, there is no dispute of the fact that A.W.1 is the wife of the deceased and the deceased worked as C.F.Mate in C.F.Section in opposite party No.1's factory; that on 14.01.1999, deceased worked in his original shift duty i.e., from 12:00 noon to 8:00 p.m; that A.W.2 was working as C.F.Mate in the same factory from 1986 and there are three C.F.Mates working in the factory and there are three shifts in a day; that everyone works for about 8 hours a day; that A.W.2 has to attend his shift from 8:00 p.m to 4:00 p.m i.e., third shift on that day; that A.W.4 who worked as Chemist [from 1991 to 2003] asked the deceased orally to continue the shift hours of A.W.2, who was on festival leave on 14.01.1999.

14. As per the evidence of A.W.1, after finishing the second shift duty from 12:00 noon to 8:00 p.m, the deceased came to his house. Again as per the instructions of the officials of the factory, he went to the factory for attending third shift at about 8:30 p.m and at about 9:00 p.m, she came to know that her husband was attacked by a snake bite and thereafter, he died. When she requested the management to provide employment to her daughter or son-in-law, the same was denied.

15. The evidence of A.W.2 clearly supports the fact that on 14.01.1999, he has to attend the third shift from 8:00 p.m to 4:00 a.m, but he was on festival leave and deceased was asked to perform his shift duty and he categorically stated that the deceased

died during the course and out of his employment with opposite party No.1 due to snake bite. In the cross-examination, it was suggested to an extent that AW.2 was not an employee of opposite party No.1, but it was denied. AW.2 also clearly stated in his evidence that he informed the chemist about his leave on that day and opposite party No.1 used to make special arrangements in the place of workmen, who are on leave. According to him, there are only three C.F.Mates in the factory. Basing on the instructions only, arrangement of the shift duties will be effected in the absence of particular workmen and there are no permanent C.F.Mates in the factory. He also stated that seasonal employees will be covered by the Insurance Policy.

16. AW.3 is also working as C.F.Mate in the opposite party No.1's factory since 1984. In his evidence, he admitted that there are three C.F.Mates. During the year 1999, the deceased and AW.2 are the other C.F.Mates besides him. On 14.01.1999, his shift is from 4:00 a.m to 12:00 noon. AW.4 also admitted that whenever C.F.Mate in C-shift is absent to his duty, the management usually ask B-Shift C.F.Mate to work in that shift. So, on 14.01.1999, AW.2 who was working in that shift was on leave and deceased, who worked in B-Shift was asked to continue in C-Shift and he also stated that the management asks the employees to work in the shift of others as overtime basis and gives half an hour time for refreshment. During that half an hour time only, the deceased went to his house and on the way while return, he died due to snake bite.

17. AW.4 is an important witness, because during that period, he worked as chemist in opposite No.1's factory. He clearly stated in his evidence that on 14.01.1999, AW.2 was on festival leave; that he asked the deceased, who worked form 12:00 noon to 8:00 p.m to

continue the shift hours of AW.2 also; and that at 9:30 p.m, he received information that deceased on his way to the factory, died due to the snake bite.

18. On behalf of opposite party No.1, RW.1 was examined and he denied that deceased was directed to continue the shift of AW.2, who was on leave. But, RW.1 admits that AW.2 has not attended the duty on 14.01.1999 for the third shift and further stated that if one C.F.Mate does not attend to his duty in his shift, alternative arrangements will be made by the shift chemists. He also stated that the shift arrangement will be mentioned in O.T register and denied that deceased died during the course and out of his employment with opposite party No.1. In the cross-examination, he admitted that on 14.01.1999, it was a crushing season and in that season, the C.F.Machine in C.F.Section will have to work continuously without any break for entire season and also admitted that AW.4 and deceased already worked according to the shifts and no separate reliever was appointed in the absence of AW.2, who took festival leave on that day. RW.1 is not aware whether AW.4, who was working as chemist asked the deceased to have refreshment for one hour by going to his house to continue in his C-shift work or not.

19. Admittedly, AW.4 is working in opposite party No.1's factory. Opposite party No.1 has not filed any documentary evidence i.e., registers containing the shift duties on 14.01.1999, leave register and in-charge arrangements register into the Court. The Assistant Commissioner of Labour-I has thrown entire blame on the applicants to prove their case. As per the evidence of AW.4, the deceased worked in third shift as per his instructions. All the records will be available with opposite party No.1. Therefore, the question of applicants producing the documentary evidence does

not arise. RW.1 is not the competent person to place the shift duties, whereas AW.4 chemist ordered the deceased to continue in the place of AW.2, who was on festival leave on that day. There is every possibility that the deceased was put in-charge of the duty of AW.2, as they are following the procedure in case if any one absents from the duty, the available other person will be continued to do the shift duty during that period as it was a crushing season and 24 hours' work will be continued, without any stoppage of work. Therefore, it can be presumed that on 14.01.1999 deceased worked for the shift from 08:00 p.m to 04:00 a.m also and that deceased died during the course and out of his employment with opposite party No.1. The Assistant Commissioner of Labour-I believed the oral evidence of RW.1, who failed to produce the documentary evidence and had erroneously dismissed the W.C.

20. Hence, for the foregoing reasons, the order dated 02.04.2004 passed by the Assistant Commissioner of Labour-I is set aside and the matter is remanded to the Assistant Commissioner of Labour-I with a direction to assess the compensation as per the eligibility by taking into consideration of the fact of age, income, ability and dependency of the deceased and also to award just and reasonable compensation to the appellants/applicants.

21. Accordingly, the Appeal is disposed of. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 20.01.2015
sr