

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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CIVIL MISCELLANEOUS APPEAL No.728 of 2005

JUDGMENT:

This civil miscellaneous appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 (for short, 'the Act'), challenging the order dated 01.09.2004, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, (for short, the Commissioner) in W.C. No.222 of 2002, wherein and whereby an amount of Rs.1,95,219/- was awarded as compensation as against the claim of Rs.5,00,000/-.

2. The parties will be hereinafter referred to as they are arrayed before the Commissioner in W.C., to avoid confusion.

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

The first petitioner is the father, second petitioner is the mother and the third petitioner is the sister of Kalva Salmon Raju. The applicants have filed the petition under Section 22 of the Act claiming compensation of Rs.5,00,000/- alleging that Salmon Raju (herein after referred as 'the deceased') died on 20.10.2001 out of and during the course of employment. The Opposite Parties have engaged the services of the deceased on contract basis in order to attend the electrician work on the electrical poles at LBS Nagar, Bodhan Village and Mandal, Nizamabad District. On 20.10.2001 while attending the work on the electrical pole, the deceased fell down from the pole and sustained injuries. The deceased died on the way to Hyderabad. By the time of accident, the deceased was aged about 25 years and used to earn Rs.6,000/- per month as electrician.

4. The Opposite Party No.1 filed written statement denying all the averments made in the petition including the manner of the accident, age and income of deceased *inter alia* contending that there was no relationship of employee and employer between the deceased and the Opposite Parties. There is no cause of action to file

the petition. Hence, the petition may be dismissed.

5. Basing on the rival contentions, the learned Commissioner has framed four issues for trial:

1. Whether the deceased worker is a workman within the definition of the Act and whether he died during the course of employment under Opposite Party No.1?
2. If so, what was the monthly wage drawn by the deceased workman?
3. What was the age of the deceased workman at the time of his death?
4. Whether the Applicants are entitled to Compensation? If so, to what extent?

6. During the course of enquiry, on behalf of the applicants, PW.1 was examined and Exs.A.1 to A.4 were marked. On behalf of the Opposite Parties, RWs.1 and 2 were examined and no documents were marked.

7. Basing on the oral, documentary evidence and other material available on record, the learned Commissioner arrived at a conclusion that the deceased died out of and in the course of his employment and allowed the petition in part by awarding compensation of Rs.1,95,219/-.

8. Feeling aggrieved by the order of the learned Commissioner, Opposite Party Nos.1 to 4 preferred the present appeal.

9. The contention of Sri R.Vinod Reddy, the learned Standing Counsel for TSSPDCL is three fold: (1) the learned Commissioner lacks inherent jurisdiction to entertain the petition filed by the applicants, as there was no relationship of employer and employee between the Opposite Parties and the deceased; (2) the findings recorded by the learned Commissioner are not supported by evidence much less legally admissible evidence; and (3) the amount of compensation awarded by the learned Commissioner is on higher side.

10. *Per contra*, learned counsel for the applicants submitted that the oral testimony of RWs.1 and 2 supports the version of the applicants that by the time of his death, the deceased was working as an employee of the Opposite Parties. He further submitted that the findings recorded by the learned Commissioner are supported by oral and documentary evidence. He also submitted that there are no grounds much less valid grounds to interfere with the order passed by the learned Commissioner.

11. Basing on the rival contentions, the substantial questions of law that arise for consideration in this appeal are:

1. Whether there exists employee and employer relationship between the deceased and the Opposite Parties as on 20.10.2001 or not?
2. Whether the amount of compensation awarded by the learned Commissioner is on higher side or not?

POINT No.1:

12. Establishment of employer and employee relationship between the Opposite Parties and the deceased is *sine qua non* to claim compensation under the provisions of the Act. The burden of proof lies on the applicants to establish the employer and employee relationship. Once the applicants *prima facie* establish the relationship of employer and employee, the onus of proof shifts on the Opposite Parties to substantiate the stand taken by them. To substantiate the case, applicant No.2 examined herself as PW.1 and got marked Exs.A.1 to A.4. To demolish the stand of the applicants, the Assistant Divisional Engineer, APNPDCL, Bodhan examined himself as RW.1 and the Additional Assistant Engineer, APNPDCL, Bodhan examined himself as RW.2.

13. As per the testimony of PW.1, the Opposite Parties have engaged her son to attend the repairing work on electrical poles of their department. Her testimony further reveals that on 20.10.2001 at about 1:30 PM, her son fell down from the electrical pole and sustained grievous head injury and died on the way to Hyderabad. In the cross examination of PW.1, it is not elicited that by the time of unfortunate incident, her son was not working in the Electricity Department. In the chief examination, RWs.1 and 2 deposed that the deceased was not engaged as employee to attend the work on electrical poles. In the cross examination, RW.1 in unequivocal terms deposed that there is a provision to engage a person on monthly wages to attend the electrical work. In the cross examination, RW.2 admitted that by the time of unfortunate incident, the deceased was working with a contractor and not with the department. The testimony of RW.1 clearly manifest that the Electricity Department used to engage the private people to attend the electrical work. If the testimony of RW.2 is taken into consideration, by the time of incident, the deceased was working as an employee under the contractor of the Opposite Parties. If the

evidence of RWs.1 and 2 is taken into consideration, the fact remains that the deceased while attending the repairing work, an electrical pole fell down and died. If the deceased was not employed by the Electricity Department, there is no necessity for him to work on the electrical pole. It is a common knowledge that no private individual will be authorised to attend the repairing work on an electrical pole. This itself lends support to the version of the applicants. In Ex.A.1 – certified copy of F.I.R, it is clearly mentioned that the deceased was working as Electrician in the Electricity Department on 20.10.2001. As per the recitals of Ex.A.2- certified copy of final report, the deceased was engaged as an employee by the Opposite Parties in order to attend the repairing work on electrical poles. As per the recitals of Ex.A.3- inquest report and Ex.A.4 – post-mortem report, the deceased died due to head injury. The recitals of Exs.A.1 to A.4 fully support the version of the applicants. If really the deceased was not working under the control of the Opposite Parties, what prompted the investigating officer to mention in the charge sheet that by the time of incident, the deceased was working in Electricity Department as an Electrician. The learned Commissioner has considered the oral and documentary evidence in right perspective and arrived at a conclusion that there exists employer and employee relationship between the Opposite Parties and the deceased as on 20.10.2001. The learned Commissioner has assigned cogent and valid reasons to his findings. Basing on the facts pleaded and proved, an irresistible conclusion that can be drawn is there exists employer and employee relationship between the Opposite Parties and the deceased at the time of unfortunate incident. The material placed before the learned Commissioner clinchingly establishes that the deceased died out of and in the course of his employment. Hence, this point is answered in favour of the applicants and against the Opposite Parties.

POINT No.2:

14. As per the recitals of Exs.A.3 and A.4, the deceased was aged about 25 years by the time of his death. The appropriate factor to be taken for the age group of 25 years is 216.91. As per the recitals of the petition, the deceased used to earn Rs.6,000/- per month. Except the self-served testimony of PW.1, there is no other convincing evidence to prove that by the time of death, the deceased used to earn Rs.6,000/- per month. In the absence of documentary evidence, some guess work is inevitable to determine the income of the deceased. Even by attending coolie work, one may get not less than Rs.100/- per day. The learned Commissioner has taken the monthly

income of the deceased as Rs.1,800/- per month. The compensation for which the applicants are entitled to comes to $1,800 \times 216.91 \times 50/100 = 1,95,219/-$. The learned Commissioner awarded the compensation by following the procedure contemplated under the Act. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the Opposite Parties that the compensation awarded by the learned Commissioner is on higher side. There are no grounds much less valid grounds to interfere with the well considered order of the learned Commissioner. The appeal lacks merits and *bona fides* and hence, the same is liable to be dismissed.

15. Accordingly, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

16. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 30.09.2015

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