

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.1130 OF 2005

JUDGMENT:

This appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 (the Act), challenging the order dated 11.7.2005 dismissing W.C. Case No.17 of 2004 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ongole.

2. The parties to this appeal will be referred to as they are arrayed before the learned Commissioner, to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows: The applicant Nos.1 and 2 are the parents of Pigili Prasad. It is the case of the applicants that first respondent engaged Pigili Prasad as cleaner on lorry bearing No.AP 31U 0788. On 04.2.2004, Pigili Prasad (hereinafter referred to as, the deceased) died in a road accident out of and in course of employment. By the time of accident, the deceased was aged about 21 years and used to earn Rs.3,000/- per month as lorry cleaner. Hence, the application claiming compensation of Rs.4,00,000/-. The lorry bearing No.AP 31U 0788, which belongs to first respondent, was insured with second respondent as on the date of the accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.4,00,000/- to the applicants.

4. The first respondent filed counter denying all the averments made in the application including the manner of the accident. It is contended that the deceased never worked as cleaner on his lorry bearing No.AP 31U 0788 on a monthly salary of Rs.3,000/-. This respondent never employed the deceased more particularly on 04.2.2004 as a cleaner on the lorry. As per the recitals of First

Information Report, the deceased was working as a mason. There was no relationship of employer and employee between him and the deceased. Hence, the application is liable to be dismissed.

5. The second respondent filed counter denying all the averments made in the application including the manner of the accident, age and income of the deceased, *inter alia*, contending that the present application is not maintainable as there was no relationship of employer and employee between first respondent and the deceased. Hence, the application may be dismissed.

6. Basing on the above pleadings, learned Commissioner framed four issues. During the course of enquiry, on behalf of the applicants, A.W.1 was examined and Exs.A1 to A7 were marked. On behalf of the respondents, the first respondent examined himself as R.W.1 and got marked Ex.B1 insurance policy.

7. On analysing the evidence available on record, the learned Commissioner arrived at the conclusion that there was no employer-employee relationship between first respondent and the deceased and dismissed the application. Feeling aggrieved by the order of the learned Commissioner, the applicants preferred the present appeal.

8. The contention of the learned counsel for the applicants is three fold:

(1) the learned Commissioner has not considered oral testimony of R.W.1, who is the owner of the lorry, in right perspective and erroneously dismissed the application;

(2) the finding of the learned Commissioner that there was no employer-employee relationship between the first respondent and the deceased is contrary to the evidence of R.W.1; and

(3) the findings recorded by the learned Commissioner are based on assumptions and presumptions; therefore, they are liable to be set aside.

9. The learned counsel for the second respondent submitted that

the findings recorded by the learned Commissioner are based on oral and documentary evidence available on record; therefore, the said findings cannot be interfered with. He further submitted that the applicants failed to prove the relationship of employer and employee between the first respondent and the deceased; therefore, the application is not maintainable under law.

10. Basing on the rival contentions, the substantial questions of law raised in this appeal are:

(1) Whether the application under Sections 10 and 22 of the Workmen's Compensation Act is maintainable without establishing the relationship of employer and employee?

(2) Whether there are any grounds to set aside the findings recorded by the learned Commissioner?

Question Nos.1 and 2:

11. Both the questions are interlinked with each other; hence, I am inclined to deal with both the questions simultaneous in order to avoid recapitulation of facts and evidence.

12. Establishment of employer-employee relationship is *sine qua non* to entertain the application under Sections 10 and 22 of the Workmen's Compensation Act. The Commissioner lacks inherent jurisdiction to entertain the application under the W.C. Act in the absence of employer-employee relationship. Let me consider the facts of the case on hand, in the light of the above legal principles.

13. The applicants are the parents of the deceased—Pigili Prasad. The question that falls for consideration, at this juncture, is *whether the first respondent engaged the deceased as cleaner on lorry bearing No.AP 31U 0788 as on the date of the unfortunate accident*. A perusal of the cause title clearly demonstrates that the applicants and the first respondent belong to Konijedu village of Tanguturu Mandal in Prakasam District. The court shall not lose sight of this aspect while

considering the material available on record. The applicant No.1 lodged the complaint to the Station House Officer, Ongole Taluk Police Station, who in turn registered a case in Crime No.40 of 2004. I have carefully scanned the recitals of Ex.A1 (First Information Report) in order to ascertain the relationship of employer and employee between first respondent and the deceased. As per the recitals of Ex.A1, the deceased was working as a mason. A perusal of Ex.A1 further reveals that as on the date of the accident, at the request of the first respondent, the deceased accompanied him to some other village. If really the deceased was engaged as a cleaner on lorry bearing No.AP 31U 0788, which belongs to first respondent, the same might have reflected in Ex.A1 F.I.R. As per the recitals of Exs.A2 (Inquest panchanama) and A3 (Post mortem examination report), the deceased died due to injuries sustained in the accident that occurred on 04.2.2004. The fact remains that the dead body of the deceased was found underneath the lorry bearing No.AP 31U 0788.

14. The first respondent filed counter denying the factum of employer-employee relationship between him and the deceased. Surprisingly while deposing evidence as R.W.1, first respondent came forward with a new version that the deceased was working as cleaner on his lorry. If really there was relationship of employer and employee between first respondent and the deceased as deposed by R.W.1, what prevented him (first respondent) to take the plea at the time of filing the counter? In the cross-examination, R.W.1 went to the extent of stating that he does not know the contents of the counter and who filed the same on his behalf. This itself indicates that the first respondent has not stick on to his original version. He putforth different versions at different stages of the proceedings. The possibility of changing the stand by the first respondent, at the time of deposing evidence as R.W.1, in order to help the applicants cannot be ruled out completely. It is a settled principle of law that a party to the

proceedings is not entitled to adduce evidence contrary to his pleadings. The court can place reliance on the testimony of the witness if the same inspires confidence. Basing on the material available on record, I am of the considered view that it is not safe to place reliance on the testimony of R.W.1.

15. Except self-served testimony of A.W.1, there is no other evidence much less cogent and convincing evidence to establish employer-employee relationship between the first respondent and the deceased. In the absence of employer and employee relationship, the learned Commissioner lacks inherent jurisdiction to entertain the application. The learned Commissioner has considered oral and documentary evidence available on record in right perspective and arrived at the conclusion that the application under Sections 10 and 22 of the W.C. Act is not maintainable for want of employer-employee relationship between the first respondent and the deceased. The learned Commissioner has assigned cogent and valid reasons to his findings. As rightly contended by the learned counsel for the second respondent, there are no grounds much less valid grounds to interfere with the well considered findings recorded by the learned Commissioner. There is no question of law much less substantial question of law that arises in this appeal. Therefore, the question Nos.1 and 2 are answered against the applicants and in favour of the respondents.

16. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 15.9.2015.

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