

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.675 OF 2005

JUDGMENT:

This appeal is filed under Section 30 of the Workmen's Compensation Act, 1923, challenging the order dated 03.12.2003 in W.C. Case No.11 of 2002 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Karimnagar, wherein and whereby an amount of Rs.2,21,085/- was awarded towards compensation to the applicant as against the claim of Rs.2,22,710/-.

2. For the sake of convenience, the parties to this appeal will hereinafter be referred to as they are arrayed before the learned Commissioner.

3. The facts leading to filing of the present appeal are briefly as follows: Opposite party No.1 engaged Mohd. Mahaboob Pasha as a driver on the tractor-trailer bearing No.AP 15K 1389 and 1390. On 17.2.2000, Mohd. Mahaboob Pasha was proceeding to Goddapaka village, while driving the vehicle, for unloading of the stones. When the tractor-trailer reached Kachapur village, Mohd. Mahaboob Pasha lost control over the vehicle and thereby it turned turtle, which resulted in his death. The Station House Officer, Keshavapatnam Police Station registered a case in Crime No.16 of 2000 under Section 304A IPC against Mohd. Mahaboob Pasha (hereinafter referred to as, the deceased). By the time of the accident, the deceased was aged about 21 years and used to earn Rs.3,500/- per month as tractor driver. The mother of the deceased filed the petition claiming compensation. The tractor-trailer, which belongs to opposite party No.1, was insured with opposite party No.2 with effect from 01.9.1999 to 31.8.2000. Therefore, opposite party Nos.1 and 2 are jointly and severally liable to pay compensation to the applicant.

4. The opposite party No.1 filed counter admitting the material averments made in the application. The deceased was having valid and effective driving licence as on the date of the accident. The tractor-trailer, which belongs to opposite party No.1, was insured with opposite No.2 at the relevant point of time; therefore, opposite party No.2 has to pay compensation, if any, to the applicant.

Opposite party No.2 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 there was no employer-employee relationship between opposite party No.1 and the deceased. Opposite party No.1 did not inform the factum of accident to this opposite party; therefore, it is not liable to pay compensation to the applicant. It is the duty of the applicant to establish that by the time of the accident, the deceased was working as driver on the tractor-trailer belongs to opposite party No.1. The amount of compensation claimed by the applicant is highly excessive and exorbitant.

5. Basing on the rival contentions, the Commissioner framed the following issues:

(1) Whether there was employee-employer relationship between the deceased workman and the opposite party No.1 as on the alleged date of accident?

(2) Whether there was an accident out of and in the course of employment of the deceased workman with the opposite party No.1 resulting in his death?

(3) The wage of the deceased workman as on the date of accident?

(4) Whether the opposite party No.2 is liable to pay compensation if due?

6. During the course of enquiry, on behalf of the applicant P.W.1 was examined and Exs.A1 to A4 were marked. On behalf of opposite party No.1, no oral or documentary evidence was adduced. On behalf of opposite party No.2, R.W.1 was examined and Exs.R1 and R2 were

marked.

7. On appraising the oral, documentary evidence and other material available on record, the learned Commissioner, while holding that the deceased died out of and during the course of employment, allowed the application in part by awarding compensation amount of Rs.2,21,585/- directing opposite party Nos.1 and 2 to deposit the same within 30 days from that day. Feeling aggrieved by the order of the learned Commissioner opposite party No.2 preferred the present appeal.

8. The contention of the learned counsel for the opposite party No.2 is four fold:

- i. the learned Commissioner has not appreciated the oral testimony of R.W.1 and the recitals of Ex.R2 (attested copy of Motor Vehicle Inspector's report) in right perspective;
- ii. the finding of the learned Commissioner that the deceased was having valid and effective driving licence is not supported by the recitals of Ex.R2;
- iii. the learned Commissioner lacks inherent jurisdiction to entertain the present application as there was no employer-employee relationship between opposite party No.1 and the deceased;
- iv. the learned Commissioner failed to consider that there was no obligation on the part of opposite party No.2 to indemnify the liability of opposite party No.1 as the deceased was not having valid and effective driving licence as on the date of the accident.

Per contra, learned counsel for the applicant submitted that the opposite No.2 has not placed positive evidence to establish that the deceased was not having driving licence to drive tractor-trailer at the time of the accident. He further submitted that the learned Commissioner has rightly considered the recitals of Ex.R2 (M.V.I. report) and allowed the application.

9. In view of the rival contentions made by the learned counsel for the parties, the question that arises for consideration in this appeal is

as follows:

Whether the Commissioner is justified in allowing the application even though the deceased was not having valid and effective driving licence to drive the crime vehicle i.e., tractor-trailer at the time of the accident?

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Point:

10. Establishment of employer-employee relationship is *sine qua non* in order to claim compensation under the Workmen's Compensation Act. The oral testimony of P.W.1 coupled with Exs.A1 and A4 (certified copy of First Information Report and attested copy of M.V.I. report respectively) clearly reveals that by the time of the accident, the deceased was working as driver on the tractor-trailer belongs to opposite party No.1. Opposite party No.1, in his counter, admitted that by the time of the accident the deceased was working as driver on the tractor-trailer belongs to him. Opposite party No.1 is the competent person to speak about employer-employee relationship between him and the deceased. A perusal of Exs.A2 and A3 (certified copy of inquest report and attested copy of post mortem examination report respectively) reveals that the deceased died of the injuries sustained in a road accident that occurred on 17.2.2000. Opposite party No.2 has not adduced rebuttal evidence. The learned Commissioner has considered the oral and documentary evidence in right perspective and arrived at a conclusion that the deceased died out of and during the course of employment. There are no grounds much less valid grounds to upset the said finding recorded by the learned Commissioner. I am fully agreeing with the finding recorded by the learned Commissioner so far as establishment of employer-employee relationship between opposite party No.1 and the deceased is concerned.

11. The oral testimony of R.W.1 coupled with Ex.R1 (copy of

insurance policy) clearly reveals that the tractor-trailer, which belongs to opposite party No.1, was insured with opposite party No.2 with effect from 01.9.1999 to 31.8.2000 vide policy No.050601/31/71/38649/99. Ex.R1 policy was in force as on the date of the accident i.e., on 17.2.2000.

12. As per the testimony of R.W.1, the deceased was not having valid and effective driving licence as on the date of the accident. In the cross-examination, R.W.1 in unequivocal terms deposed that as per the recitals of Ex.R2 M.V.I. report, driving licence of the deceased was not produced before the Motor Vehicle Inspector. It appears that basing on Ex.R2, opposite party No.2 has taken the stand that the deceased was not having valid and effective driving licence as on the date of the accident. It is a known fact that Motor Vehicle Inspector will inspect the crime vehicle and issue report as to the mechanical condition of the vehicle. A perusal of Ex.R2 report reveals that the Motor Vehicle Inspector visited Keshavapatnam Police Station on 25.2.2000 and examined the crime vehicle. This clearly indicates that the Motor Vehicle Inspector inspected the vehicle eight days after the death of the deceased. There is no mention in Ex.R2 report that the Motor Vehicle Inspector made an attempt to ascertain whether the deceased was having driving licence or not. In Ex.R2, it is mentioned that driving licence of the deceased was not produced before him. It is not the case of opposite party No.2 that in spite of service of notice on opposite party No.1, he did not choose to produce driving licence of the deceased before the Motor Vehicle Inspector.

13. The Workmen's Compensation Act is a social beneficial legislation. It is a settled principle of law that when two views are possible basing on the facts pleaded and proved, the view, which is favourable to the workman, has to be taken. Non-possession of driving licence and non-holding of driving licence are two different

things. First one refers to 'not having' at that point of time and the second one refers to non-obtaining of driving licence from the concerned authority. In the case on hand, merely because the driving licence of the deceased was not produced, it cannot be presumed that he did not obtain driving licence by the time of the accident. As observed earlier, if the applicant fails to produce the driving licence even after service of notice, there is some justification in the stand taken by opposite party No.2. The material available on record clinchingly establishes that neither opposite party No.2 nor the Motor Vehicle Inspector issued notice to the applicant to produce the driving licence of the deceased. Question of producing the driving licence by the deceased himself does not arise as he died eight days prior to the inspection of the crime vehicle by the Motor Vehicle Inspector. In such circumstances, the burden of proof lies on the insurance company to establish that the deceased was not having valid and effective driving licence as on the date of the accident so as to absolve its liability. Mere marking of Ex.R2 M.V.I. report by itself would not amount to substantiation of the stand taken by opposite party No.2.

14. Having regard to the facts and circumstances of the case, I am of the considered view that opposite party No.2 failed to establish that opposite party No.1 had violated the terms and conditions of the policy by entrusting the tractor-trailer to the deceased, who was not having valid driving licence as on the date of the accident. Therefore, I am unable to accede to the contention of learned counsel for the appellant-opposite party No.2 that the deceased was not having valid and effective driving licence as on the date of the accident.

15. As per the testimony of P.W.1, her son used to earn Rs.3,500/- per month as a tractor driver. Except the self-served testimony of P.W.1, there is no other convincing evidence to prove the income of the deceased. Basing on G.O.Ms.No.71, Women Development, Child

Welfare and Labour (Lab.II) Department, dated 16.4.1991, learned Commissioner has determined the total compensation as Rs.2,21,585/-. The learned Commissioner has followed the procedure as contemplated under the Workmen's Compensation Act and relevant G.O., and awarded just and reasonable compensation. Therefore, the contention of learned counsel for opposite party No.2 that the quantum of compensation awarded by the learned Commissioner is on higher side cannot be countenanced. The appeal lacks merits and *bona fides*. Accordingly, the point is answered against the appellant-opposite party No.2.

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: 07.9.2015.

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