

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
CIVIL MISCELLANEOUS APPEAL No.682 OF 2005

JUDGEMENT:

1 This appeal is preferred assailing the order dated 24.08.2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Kurnool wherein and whereby an amount of Rs.2,24,000/- was awarded as compensation as against the claim of Rs.2,25,000/-.

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

3 The facts leading to the filing of the present appeal are as follows:

4 The Opposite Party No.1 engaged one A.Swamy as a helper on the crane bearing No.AEA 6032 (mobile crane). As per the directions of the Opposite Party No.1, on 15.09.2000 the said Swamy along with his colleagues was laying pipeline at K.C.Canal bridge, near Ashok Nagar, Kurnool. While attending the work, the said Swamy fell down into the canal and died due to drowning. In connection with the said incident, the Station House Officer, Kurnool registered a case in Cr.No.170 of 2000 under Section 174 Cr.P.C. By the date of death, the said Swamy (hereinafter referred to as 'the deceased') was aged about 20 years and used to earn Rs.2,400/- p.m. The crane bearing No.AEA 6032 which belongs to the Opposite Party No.1 was insured with the Opposite Party No.2 with effect from 24.7.2000 to 23.7.2001. Therefore, the father of the deceased filed the claim petition seeking compensation of Rs.2,25,000/- from the Opposite Parties jointly and severally.

5 Opposite Party No.1 filed counter admitting the averments made in the claim petition inter alia stating that the crane bearing No.AEA 6032 was insured with the Opposite Party No.2 and hence the Opposite Party No.2 alone has to pay compensation to the applicant.

6 Opposite Party No.2 filed counter denying the relationship of employer and employee between the Opposite Party No.1 and the deceased as well as the manner of death. The incident has not taken place during the course of employment as by the time of incident the deceased was not working as employee of the Opposite Party No.1 and hence the provisions of the Workmen's Compensation Act, 1923 (for short 'the Act') are not attracted at all. There is a clear collusion between the applicant and the Opposite Party No.1 and the same is evident from the allegations of the claim petition and the later conduct of the parties. It is the duty of the applicant to prove that the crane in question was insured with the Opposite Party No.2 by the date of incident. Hence the petition may be dismissed.

7 Basing on the above pleadings, the learned Commissioner framed the following issues.

1. Whether there was employee-employer relationship between the deceased workman and the Opposite Party No.1?
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 injuries and death?
3. The exact age and wages of the applicant and,
4. Whether the Opposite Party No.1 and the Opposite Party No.2 are liable to pay compensation, if payable?

8 During the course of enquiry, on behalf of the applicant, A.W.1 was examined and Exs.A.1 to A.5 were marked. On behalf of the Opposite Party No.2, R.W.1 was examined, but no documents were

marked.

9 Basing on the oral, documentary evidence and other material available on record, the learned Commissioner has arrived at a conclusion that the deceased died out of and during the course of employment and awarded compensation of Rs.2,24,000/- with interest @12% p.a. Feeling aggrieved by the order of the learned Commissioner, the Opposite Party No.2 filed the present appeal.

10 The contention of the learned counsel for the Opposite Party No.2 is three fold. **a)** The finding of the learned Commissioner that by the time of incident the deceased was working as an employee under Opposite Party No.1 is not supported by any material. **b)** The learned Commissioner has not considered the recitals of Exs.A.1 and A.2 in right perspective and allowed the claim petition on surmises and conjectures. **c)** The findings recorded by the learned Commissioner are contrary to the provisions of the Act as well as the Indian Evidence Act.

11 *per contra*, the learned counsel for the applicant submitted that there is no substantial question of law in the appeal as postulated under Section 30 of the Act and hence the appeal is liable to be dismissed. He further submitted that the learned Commissioner has considered the recitals of Ex.A.1-FIR and Ex.A.2-Inquest Panchanama in right perspective and allowed the petition. He further submitted that the findings recorded by the learned Commissioner are supported by the evidence available on record, much less, legally admissible evidence.

12 Now the point that arises for consideration in this appeal is:

“Whether the judicial relationship of employee and employer between the deceased and the Opposite Party No.1 was established by the applicant?”

Point:

13 The predominant contention of the learned counsel for the applicant is that there is no substantial question of law in the appeal and hence it can be dismissed in limini. The learned counsel for the applicant has placed reliance on the ratio laid down in **T.S.Shylaja Vs. Oriental Insurance Company Limited**^[1] wherein Hon'ble apex Court held as under:

9. What is important is that in terms of the 1st proviso, no appeal is maintainable against any order passed by the Commissioner unless a substantial question of law is involved. This necessarily implies that the High Court would in the ordinary course formulate such a question or at least address the same in the judgment especially when the High Court takes a view contrary to the view taken by the Commissioner.

14 It is a settled principle of law that no appeal lies under section 30 of the Act unless there is a substantial question of law involved in it. In one way section 30 of the Act is akin to Section 100 of CPC so far as the maintainability of appeal is concerned basing on the substantial question of law. In the instant case, Opposite Party No.2 filed an appeal on the ground that the learned Commissioner of Labour lacks inherent jurisdiction to entertain the application. This itself is a substantial question of law. Establishment of employer and employee relationship is *sine qua non* to entertain the application under Section 22 of the Act. There is no second opinion that if the findings of the learned Commissioner are based on evidence, which is not legally admissible, or, based on the material which is irrelevant, they are liable to be set aside in limini as rightly contended by the learned counsel for the Opposite Party No.2.

15 The material available on record clearly reveals that the various contentions raised by the Opposite Party No.2 falls within the scope of Section 30 of the Act. Viewed from factual or legal aspects, I am unable to accede to the contention of the learned counsel for the

applicant that the appeal is liable to be dismissed in limini for want of substantial question of law.

16 Let me consider the factual aspect of the case in the light of the rival contentions. To substantiate the stand taken by the Opposite Party No.2, the learned counsel has taken me to the following decisions.

National Insurance Co. Ltd Vs. Rattani & Others^[2] wherein the Hon'ble apex Court held as follows:

7. We are not oblivious of the fact that ordinarily an allegation made in the first information would not be admissible in evidence per se but as the allegation made in the first information report had been made a part of the claim petition, there is no doubt whatsoever that the Tribunal and consequently the appellate courts would be entitled to look into the same.

Oriental Insurance Co. Ltd Vs. Premalata Shukla & Others^[3] wherein this Court held as follows:

13. However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. Both the parties have relied thereupon. It was marked as an Exhibit as both the parties intended to rely upon them.

14. Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise.

17 As per the principle enunciated in the cases cited supra, a party to the proceedings who tenders a document in evidence, is not entitled to take a stand that recitals of the part of the document are not binding on him or her.

18 The learned counsel for the applicant submitted that the Workmen's Compensation Act is a piece of beneficial legislation and hence the Court has to interpret the provisions of the Act liberally keeping in mind the object of the enactment.

19 Controverting the same, the learned counsel for the appellant/Opposite Party No.2 has drawn my attention to the ratio laid down in **Sanjeev Kumar Samrat Vs. National Insurance Co.**

Ltd & Others^[4] the Hon'ble apex Court held as under:

20.That apart, the liability of the insurer in respect of the said covered category of employees is limited to the extent of the liability that arises under the 1923 Act. There is also a stipulation in Section 147 that the owner of the vehicle is free to secure a policy of insurance providing wider coverage. In that event, needless to say, the liability would travel beyond the requirement of Section 147 of the Act, regard being had to its contractual nature. But, a pregnant one, the amount of premium would be different.

The Oriental Insurance Company Vs. Meena Variyal & Others Vs.

Meena Variyal & Others^[5]. As per the principle enunciated in these two cases, while interpreting the provisions of the beneficial legislation, the Tribunal or the Court should not ignore the basic principles of law.

20 The entire controversy revolves around the recitals of Ex.A.1- FIR and Ex.A.2 Inquest Panchanama. While interpreting the recitals of the document, the Court has to take into consideration the cumulative effect of the recitals of the document in order to come to a just and reasonable conclusion. If the part of the document is read in isolation of the other part, the logical end point would be in a different way. After reading the document in entirety, one may come to a different conclusion to that of the earlier conclusion basing on the later part of the document. The underlying object or letter and spirit of interpretation of the document is to read the recitals of the document as a whole in order to ascertain the just and reasonable conclusion. If the Court place reliance on a particular portion of the document, while ignoring the other part of the document, it would, certainly, amount not only to violation of cardinal principle of law of interpretation, but also leads to miscarriage of justice.

21 I have carefully scanned Ex.A.1-FIR and Ex.A.2-Inquest Panchanama. There is a reference of Coromandel Company, Hyderabad in the first para. If the Court places much reliance on the stray sentence of Coromandel Company, Hyderabad, while ignoring the other part of the document, certainly, it gives an impression that the deceased belongs to Coromandal Company, Hyderabad. The author of the Ex.A.1 - FIR has not stated whether Seshagiri Rao & Company will also be called as Coromandal Company or not. This missing link made the Opposite Party No.2 to take the stand that there is collusion between the applicant and the Opposite Party No.1. The specific stand of the applicant is that by the time of the incident, the deceased was working under the supervision and control of Opposite Party No.1 by receiving salary. The oral and documentary evidence on which the applicant is placing much reliance is in tune with the pleadings. In the cross examination of A.W.1 it is not elicited that Coromandel Company Hyderabad and Seshagiri Rao & Company are two different organisations and at the relevant point of time the deceased was wholly under the control of Coromandal Company, Hyderabad. A perusal of Ex.A.1 clearly demonstrates that the deceased had been attending the pipeline work continuously for a period of nine months immediately preceding to the date of the unfortunate incident. The deceased had been working as helper on the crane bearing No.AEA 6032. It is a known fact that it may not be possible to lay a pipeline without the help of the crane. Equally it is also a known fact that apart from driver, invariably one person has to be engaged as a helper for operation of the crane. A perusal of Ex.A.5 – insurance policy reveals that the crane bearing No.AEA 6032 belongs to M/s. K.Seshagiri Rao & Co, Hyderabad. This clearly indicates that the crane on which the deceased was working belongs to M/s. K.Seshagiri Rao & Co, Hyderabad. The possibility of calling that company as Coromandel cannot be ruled

out completely.

22 A perusal of the inquest panchanama clearly reveals that K.Srinivasa Rao S/o K.Seshagiri Rao was present at the time of conducting inquest on the dead body of the deceased. The material available on record clearly reveals that the dead body of the deceased was handed over to K.Srinivasa Rao S/o K.Seshagiri Rao. If there is no employer and employee relationship between K.Seshagiri Rao and the deceased, as contended by the Opposite Party No.2, what made the son of said Seshagiri Rao to be present at the time of inquest over the dead body of the deceased as well as taking custody of the dead body after completion of necessary legal formalities? The Opposite Party No.1 at the earliest point of time filed counter admitting that the deceased was working in its company at the time of unfortunate incident as a helper on the crane. For better appreciation of the contention of the appellant / Opposite Party No.2, it is apposite to refer to the cross examination of R.W.1 that **“It is also true that the crane belongs to the Opposite Party No.1. It is true that the crane was functioning at the K.C. Canal, Kurnool. The accident took place resulting the death of the deceased.”**

23 The witness of the Opposite Party No.2 if not directly by necessary implication testified the version of the applicant that the deceased died while operating the crane in question which was insured with the Opposite Party No.2. The Opposite Party No.1 filed counter admitting the employer and employee relationship between him and the deceased. The police handed over the dead body of the deceased to the son of the owner of the crane. The Court shall not lost sight of these material factual aspects in order to ascertain whose version of the parties to the proceedings is tenable.

24 A perusal of Ex.A.5 clearly demonstrates that the Opposite

Party No.1 has been paying salary to the deceased. Nothing is elicited in the cross examination of A.W.1 to impeach the credibility of recitals of Ex.A.5 – salary certificate. As observed earlier, the recitals of Exs.A.1 and A.2 support the version of the applicant that the deceased has been working as helper on the crane. Even assuming but not conceding that the deceased originally belongs to Coromandel Company, Hyderabad as on the date of incident, the fact remains that the deceased has been working under the control of Opposite Party No.1 at the relevant point of time. The definition of ‘employer’ under Section 2 (1) (e) of the Act encompasses in it even a temporary employee. Viewed from this angle also, the deceased will fall within the purview of ‘workman’. It is apposite to refer to the cross examination of R.W.1, which reads that “we have not submitted the claim form submitted by Opposite Party No.1.” The testimony of R.W.1 clearly demonstrates that for one reason or the other, Opposite Party No.2 did not choose to produce the claim form submitted by Opposite Party No.1 to it. If really the deceased was employee of Coromandel Company, Hyderabad, what prompted the Opposite Party No.1 to submit the claim form to Opposite Party No.2? This aspect also negates the contention of Opposite Party No.2 that there is no employer and employee relation between the Opposite Party No.1 and the deceased.

25 One of the contentions of the Opposite Party No.2 is that there is collusion between the applicant and the Opposite Party No.1. It is a settled principle of law that the burden of proof heavily lies on the party who pleads collusion and fraud. The evidence on which Opposite Party No.2 places reliance falls short to establish the alleged collusion between the applicant and the Opposite Party No.2.

26 The learned counsel for the applicant has drawn my attention to the ratio laid down in **United India Insurance Company Limited, rep. by**

its Divisional Manager, Kadapa V. Obili Venkata Dasu and Others^[6] and

P. Narasimha Reddy V. K. Ramchander^[7]. As per the principle enunciated in the cases cited supra, once the employer admits the factum of employment, it is not at all open to the insurer to doubt those facts.

27 By examining A.W.1 and marking Exs.A.1 to A.5, the applicant clearly established the jural relationship of employer and employee between the Opposite Party No.1 and the deceased. The learned Commissioner has considered the material available on record keeping in mind the various provisions of the Act and arrived at a right conclusion that by the time of incident, the deceased was working as employee under Opposite Party No.1.

28 The learned Commissioner has assigned cogent and valid reasons to his findings. There are no grounds much less valid grounds to interfere with the well considered order of the learned Commissioner. The contention of the Opposite Party No.2 that the learned Commissioner lacks inherent jurisdiction to entertain the application filed by the applicant under Section 22 of the Act is not sustainable either on facts or on law. The various legal and factual contentions raised by the Opposite Party No.2 have no legs to stand.

29 For the foregoing discussion, I am of the considered view that the appeal lacks merits and bonafides. Accordingly the appeal is dismissed. No order as to costs. As a sequel, miscellaneous petitions if any pending in this miscellaneous appeal shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 07-08-2015

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- [\[1\]](#) (2014) 2 SCC 587
- [\[2\]](#) 2009 (2) ACJ 925
- [\[3\]](#) 2007 (4) ALD 85
- [\[4\]](#) 2013 (2) ALD 105 (SC)
- [\[5\]](#) (2007) 5 SCC 428
- [\[6\]](#) 2011 (4) ALD 215
- [\[7\]](#) 2004 (4) ALD 15