

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.985 of 2005

JUDGMENT:

This civil miscellaneous appeal is filed under Section 30 of the Workmen's Compensation Act, assailing the order dated 29.10.2004, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Warangal-I, (for short, the Commissioner) in W.C. Case No.24 of 2003, wherein and whereby the claim of the petitioners for Rs.3,00,000/- was allowed.

2. The parties will be hereinafter referred to as they are arrayed in W.C. Case.

3. The facts leading to filing of the present appeal are briefly as follows: The petitioner No.1 is the wife and petitioner Nos.2 to 4 are children of late Komatireddy Sudershan Reddy. At the relevant point of time, Sudershan Reddy was working as Supervisor under the control of the first respondent, who has been carrying on borewell business. On 30.7.2001, after attending the repairing work of borewell, the deceased was proceeding from Chityal to Nalgonda on Hero Honda motor cycle bearing No.AP 24 7443 belongs to the first respondent. When he reached Yellareddugudem, he fell down from the motor cycle and sustained grievous injuries. Immediately after the accident, Sudershan Reddy was shifted to Kamineni Hospital, Narketpalli wherein he died while undergoing treatment. The Station House Officer, Narketpalli Police Station registered a case in Crime No.87 of 2001 under Section 304-A IPC. By the time of the death, Sudershan Reddy (hereinafter referred to as, the deceased) used to earn Rs.3,000/- per month as employee of the first respondent. The motor cycle was insured with the second respondent and the third respondent confirmed the policy issued by the second respondent. Therefore, the respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioners.

4. The first respondent remained *ex parte*. The respondent Nos.2 and 3 filed counter denying all the averments made in the application including the factum of death of Sudershan Reddy. The motor cycle was not insured with the respondents—insurance company. The copy of the policy shows that no premium was paid by the first respondent. Unless and until the petitioners prove that the premium was collected by the second respondent covering the risk of the employees, respondent Nos.2 and 3 are not liable to pay compensation to the petitioners.

5. Basing on the above pleadings, the Commissioner framed the following issues:

- (1) Whether the deceased Komatireddy Sudershan Reddy was a workman under Workmen Compensation Act and the deceased met with an accident on 30.7.2001 out of/in due course of his employment with respondent No.1, due to which he died?
- (2) Whether the deceased was paid with the wages of Rs.3,500/- per month excluding batta and other allowances and what was the age of the deceased at the time of accident?
- (3) Whether the amount of compensation payable by the respondents, if so, what amount petitioners is entitled to?
- (4) Whether the Authority has got jurisdiction to entertain and decide the claim of the petitioners?

6. During the course of enquiry, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the respondent Nos.2 and 3, R.W.1 was examined and Ex.B1 policy was marked.

7. Basing on the oral, documentary evidence and other material available on record, the learned Commissioner arrived at a conclusion that the petitioners are entitled for compensation amount of Rs.3,00,000/- and allowed the application. Feeling aggrieved by the order of the learned Commissioner, the respondent Nos.2 and 3 preferred the present appeal.

8. The contention of the learned counsel for the appellants—

respondent Nos.2 and 3 is two fold:

(1) the deceased will not fall within the ambit of 'workman' as defined under Section 2(n) of the Workmen's Compensation Act; and

(2) the motor cycle bearing No.AP 24 7443 was not insured with the appellants at the relevant point of time.

Per contra, learned counsel for the respondent Nos.1 to 4-claimants submitted that there are no grounds to interfere with the order of the learned Commissioner.

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

Whether there are any grounds to interfere with the order passed by the Commissioner?

Point:

10. To substantiate the case, the first petitioner examined herself as P.W.1 and got examined P.W.2 who is the co-employee of the deceased. To dislodge the case of the petitioners, R.W.1 was examined. The oral testimony of P.Ws.1 and 2 coupled with Exs.A1 to A3 clearly reveals that the deceased died on 31.7.2001 due to the injuries sustained in the accident. There is no whisper in the testimony of R.W.1 that the deceased did not sustain injuries in the road accident that occurred on 30.7.2001. The plea of respondent Nos.2 and 3 that the deceased did not sustain injuries on 30.7.2001 is negated by the recitals of Exs.A1 to A3.

11. As per the oral testimony of P.Ws.1 and 2, by the time of accident, the deceased was working under the control of the first respondent. In the cross-examination of P.Ws.1 and 2, nothing was elicited to shake their testimony so far as employer and employee relationship between the first respondent and the deceased is concerned. The material available on record clinchingly establishes that by the time of the accident, the deceased was working under the control of the first respondent. The finding of the learned Commissioner that by the time of death, the deceased was working

under the control of the first respondent is supported by cogent and convincing material. I am fully agreeing with the finding recorded by the learned Commissioner.

12. The material available on record clearly reveals that by the time of accident, the deceased was aged about 43 years. The learned Commissioner has taken relevant factor 175.54. By following the provisions of the Minimum Wages Act, the learned Commissioner arrived at a conclusion that the deceased may earn Rs.3,500/- per month. The learned Commissioner, by following the procedure contemplated under the Workmen's Compensation Act, arrived at a conclusion that the claimants are entitled to an amount of Rs.3,07,195/-. However, the learned Commissioner restricted the compensation amount to Rs.3,00,000/- as claimed by the petitioners.

13. The contention of respondent Nos.2 and 3 is that the motor cycle bearing No.AP 24 7443 was not insured with it at the relevant point of time. The respondents have taken a specific plea that the second respondent has not collected the premium. R.W.1 being the employee of the respondents-insurance company is competent to speak about these factual aspects. In the chief-examination itself, R.W.1 in unequivocal terms deposed that motor cycle bearing No.AP 24 7443 was insured with second respondent with effect from 03.8.2000 to 02.8.2001. He further deposed that they issued Ex.B1 policy after collecting the premium. The stand of the respondent Nos.2 and 3 that they have not collected premium is not supported by their own witness. On the other hand, the oral testimony of R.W.1 coupled with Ex.B1 clearly reveals that the second respondent issued Ex.B1 policy after collecting the premium from the first respondent.

14. In the light of the foregoing discussion, I am unable to accede to the contention of the learned counsel for the respondent Nos.2 and 3 that the petitioners failed to establish that the deceased died during the course of employment and the respondent Nos.2 and 3 have not

collected premium from the first respondent. The learned Commissioner has assigned cogent and valid reasons to his findings. I am fully agreeing with the findings recorded by the learned Commissioner. At the time of arguments, it is brought to the notice of this court that the petitioners have already withdrawn the amount deposited before the learned Commissioner. Even otherwise, the appeal lacks merits and bona fides. There are no grounds to interfere with the well considered order passed by the learned Commissioner. The point is, accordingly, answered.

15. In the result, the civil miscellaneous 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: 06.7.2015
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