

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.67 of 2008

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JUDGMENT:-

This Civil Miscellaneous Appeal under Section 30 of the Workmen's Compensation Act, 1923 (presently known as Employees' Compensation Act, 1923) ('the Act', for brevity) is directed against the order dated 19.04.2006 passed in W.C.No.64 of 2003 (F) by the learned Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour at Mahabubnagar.

2. I have heard the submissions of the learned counsel for the appellant/second opposite party ('the second opposite party', for brevity). There is no representation for the respondents 1 and 2/the applicants ('the applicants' for brevity). Though the third respondent herein/the first opposite party is served with a notice, none appeared for the said respondent. I have perused the material record.

3. The cases of the parties that are necessary for consideration and the basic facts that lead to the filing of this appeal are as stated infra.

3.1 To begin with the case of the applicants, in brief, is this: "The applicants are the parents of Md. Jamaluddin, the deceased. The deceased worked as a driver on the tractor-trailer bearing registration nos. AP 22 U 0223 and 0224 belonging to the first opposite party, who is the owner-cum-employer of the deceased. The said tractor-trailer was insured with the second opposite party. On 13.04.2003, while the deceased was discharging his duty as a driver on the said tractor-trailer in the fields of Polkampally village, it was noticed that the fuel in the tank of the said tractor-trailer had exhausted. On the instructions of his employer, the deceased along with another person had proceeded on a scooter to Sherpally (B) village to fetch fuel in a 20 liter can. After securing the fuel, while he and the said other person were returning on the scooter to the work spot, the scooter, being driven by the deceased, had

dashed against a stationed lorry. In the said accident, the deceased had sustained injuries and succumbed to the injuries on the spot. On a report, the Station House Officer, Annasagar Police Station had registered a case in crime no.45 of 2002. The deceased was aged 23 years and was earning a wage of Rs.3,500/- per month besides batta and was contributing the same to the applicants, who are his parents. Since the deceased had died out of and during the course of his employment as the driver on the above said tractor-trailer of the first opposite party, which was insured with the second opposite party, both the opposite parties are jointly and severally liable to pay a compensation of Rs.4,00,000/-."

3.2 The first opposite party had remained *ex parte* before the learned Commissioner.

3.3 The case of the second opposite party as stated in its written statement, in brief, is as follows: 'The relationship of employee and employer between the deceased and the first opposite party is not admitted; The tractor-trailer, even according to the pleaded case of the applicants, is not involved in the accident; at the time of the accident, the deceased was proceeding on a scooter, which did not belong to the 1st opposite party and which is not admittedly insured with the second party; the accident had not occurred while the deceased was discharging his duties on the tractor-trailer; since the said vehicle is not involved in the accident, no liability can be fastened against the second opposite party/insurer; the insurer and the insured of the scooter are necessary and proper parties; the wage pleaded and the compensation claimed are excessive; therefore, the petition is liable to be dismissed.

3.4 At trial, the first opposite party and a person who was employed at the relevant time as a labourer on the tractor-trailer were examined as AWs1 and 2 and exhibits A1 to A9 were marked on the side of the applicants. An officer of the insurance company was examined as RW1 and the copy of the Insurance Policy of the tractor-trailer was exhibited as exhibit D1.

3.5 On merits, the learned Commissioner had awarded compensation of Rs.2,49,596/- to the applicants payable by both the opposite parties; and,

directed the opposite parties to deposit the said amount by way of a drawn demand draft in favour of the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Mahabubnagar within 30 days from the date of the receipt of the copy of the said order and had further directed that on failure of the opposite parties to so deposit the compensation, the applicants would be entitled to interest at the rate of 9% per annum on the amount of compensation from the date of filing of the application. Feeling aggrieved of the said order, the second opposite party had preferred this appeal.

4. The learned counsel for the appellant/second opposite party would contend as follows: "The Commissioner was in error in not considering the contention that the deceased had died while driving the scooter but, not the tractor-trailer belonging to the first opposite party on which he was allegedly employed as a driver and that the tractor-trailer, which is insured with the second opposite party, is not involved in the accident and that the death of the deceased did not occur while he was driving the tractor-trailer on which he was said to have been employed as a driver and that no reliable evidence was adduced to show that there is employer-employee relationship between the first opposite party and the deceased and that there is no nexus between the cause of the death and the employment of the deceased under the first opposite party and that since the deceased had died while driving a scooter and in an accident involving the scooter and a lorry, the insured and the insurer of the scooter and the lorry are necessary parties. The learned Commissioner had erroneously taken the age of the deceased as 23 years and has awarded Rs.2,49,596/- as compensation even though there is no proof regarding the age and the wage of the deceased. The learned Commissioner had erroneously granted compensation with interest at the rate of 9% per annum which is on the higher side and had erroneously fastened the liability on the second opposite party."

5. Now the points that arise for determination in this appeal are:-

1. **Whether the pleaded accident resulting in the death of the deceased Md.Jamaluddin had occurred out of and in the**

course of his employment as a driver on the tractor-trailer bearing registration nos. AP 22 U 0223 and 0224 belonging to the first opposite party and insured with the second opposite party?

2. Whether the order of the learned Commissioner fastening liability on the second opposite party is erroneous and is liable to be set aside under the facts and in law?
3. Whether the compensation awarded and the interest granted by the learned Commissioner are on the higher side and are liable to be scaled down?
4. To what relief?

6. POINTS:

6.1 The cases of both the parties are already stated *supra*, in detail. I have given earnest consideration to the facts and noted the submissions of the learned counsel for the second opposite party.

6.2 The father of the deceased who is the first applicant had deposed in-line with the pleaded case and had maintained his stand in the cross-examination. He is admittedly not an eye-witness to the accident. AW2 is the labourer, who had accompanied the deceased on the scooter at the time of the accident. He had categorically deposed that the deceased was employed as a driver on the tractor-trailer belonging to the first opposite party and that while the deceased was discharging his duties on the tractor-trailer in the fields, the fuel in the tractor-trailer had exhausted and that, therefore, on the instructions of the employer of the deceased, he and the deceased had proceeded on a scooter to fetch fuel in a 20-litre can and that after securing the fuel, while they were returning on the scooter being driven by the deceased, the scooter met with an accident with a lorry which was in stationary condition and that in the said accident, the deceased had sustained injuries and had succumbed to the injuries on the spot. The contents of the exhibits A1 to A4. viz., the certified copies of FIR, the inquest report, post mortem examination report and the final report respectively, fully corroborate the version of AW2. When the case pleaded in the evidence of the second opposite party was suggested to AW2, he had denied the suggestions and had maintained his stand. Therefore, it can safely be concluded that the deceased died in the pleaded accident and that his death

had occurred out of and in the course of employment as a driver on the subject tractor trailer belonging to the 1st opposite party and insured with the 2nd opposite party.

6.3 Now the next questions are as to whether there is any nexus between the accident resulting in the death of the deceased and whether his death had occurred while he was discharging his duties as a driver on the tractor-trailer. In the instant case, it is sufficiently established that while the deceased was actually discharging his duty as a driver on the tractor-trailer, the fuel in the said vehicle had exhausted, and that therefore, he had proceeded on a scooter along with another labourer, on the instructions of his employer, to fetch fuel and that after securing the fuel and while he was returning to the work spot, the scooter on which he was traveling had met with an accident and that he had succumbed to the injuries on the spot. Therefore, the learned Commissioner was justified in holding that there is nexus between the employment of the deceased and the accident and that the deceased died out of and during the course of employment, though the tractor-trailer on which the deceased was employed as driver is not actually involved in the accident.

6.4 Coming to the next aspect that the insurer and the insured of the lorry are necessary parties or not, it is to be noted that this is not a claim under the provisions of the Motor Vehicles Act, 1988; and, the instant claim is made by the parents of the deceased under the provisions of the Workmen's/Employees' Compensation Act, 1923, and, therefore, the claim lies only against the employer and the insurer of the vehicle of the employer. Therefore, the contention of the learned counsel for the appellant herein that the insured and insurer of the lorry are necessary parties is devoid of merit.

6.5 Coming to the aspect of quantum of compensation awarded by the learned Commissioner, the learned Commissioner, having regard to the age of the deceased as mentioned in exhibit A6 – the driving license of the deceased and the wage according to the contents of G.O.Ms.No.48, LET&F

(Lab-II) Dated 14.10.2000 had determined the said two components, namely the age and the wage of the deceased and had applied the said components in the formula and then determined the compensation. Therefore, this Court finds no infirmity calling for interference with the quantum of compensation awarded.

6.6 Finally, coming to the aspect of rate of interest, the learned counsel for the 2nd opposite party had contended that the interest awarded by the learned Commissioner is on the higher side and the same is liable to be scaled down. In the case on hand, the learned Commissioner had directed the opposite parties to deposit the amount of compensation by way of demand draft in favour of the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Mahabubnagar, within 30 days from the date of receipt of the said order and had further observed that on failure to do so, the applicants are entitled for interest @ 9% per annum on the amount of compensation from the date of filing of the application. On the failure of the opposite parties to deposit the compensation within the time granted in the order, the liability to pay interest would arise. Therefore, if only the compensation is not deposited within the said time, the appellant becomes liable to pay the interest. Having regard to the above said facts, this Court finds that award of interest @ 9% per annum does not call for any interference.

7. Viewed thus, this Court finds that there is no merit in the appeal.

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

M. Seetharama Murti, J

15th July, 2015
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