

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.1062 OF 2005

JUDGMENT:

This civil miscellaneous appeal is filed under Section 30 of the Workmen's Compensation Act, challenging the order dated 29.9.2004 in W.C. Case No.33 of 2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Warangal-I (for short, the Commissioner), wherein and whereby an amount of Rs.2,99,100/- was awarded as against the claim of Rs.3,05,575/-.

2. The parties to this appeal will hereinafter be referred to as they are arrayed before the Commissioner in W.C. Case, for the sake of convenience.

3. The facts leading to filing of the present appeal are briefly as follows: Anumandla Prakash @ Prakasam was engaged by the first respondent as Clerk-cum-Cashier in his Fertilizers shop, on a monthly salary of Rs.2,500/-. On 16.4.2003, Prakasam went to Mulugu on motor cycle bearing No.AP 36K 5915 for collection of dues from the villagers. When he reached near A.P.S.W. Residential Junior College, Jakaram, in an attempt to avoid a cyclist, Prakasam himself fell down from the motor cycle and sustained injuries. Prakasam (hereinafter referred to as, the deceased) died on the way to M.G.M. Hospital, Warangal. The Station House Officer, Mulugu Police Station registered a case in crime No.44 of 2003 under Sections 337 and 304A IPC against Prakasam and the same was closed as the accused himself died. By the time of death, the deceased was aged about 32 years and drawing a salary of Rs.2,500/- per month by working under the control of the first respondent. The petitioner is the wife of the deceased, who is solely dependant on the income of the deceased. The motor cycle bearing No.AP 36K 5915, which belongs to the first

respondent, was insured with the second respondent; therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation. Hence, the petition.

4. The first respondent filed counter stating that the deceased was employed as Clerk-cum-Cashier in his Fertilizers shop on a monthly salary of Rs.2,500/- per month. This respondent came to know about the death of the deceased through the Station House Officer, Mulugu Police Station. The motor cycle bearing No.AP 36K 5915 was insured with the second respondent as on the date of the accident. Therefore, the second respondent alone is liable to pay compensation.

5. The second respondent filed counter denying all the averments made in the petition including the employer and employee relationship between the first respondent and the deceased. The petitioner, in collusion with the first respondent, filed the present petition in order to claim compensation from this respondent. The deceased was not the employee of the first respondent as alleged. Hence, the petition may be dismissed.

6. During the course of trial, on behalf of the petitioner, P.W.1 was examined and Exs.A1 to A5 were marked. On behalf of the respondents, no oral evidence was let in but Ex.B1 was marked.

7. Basing on the oral, documentary evidence and other material available on record, the learned Commissioner allowed the petition by awarding compensation of Rs.2,99,100/- as stated supra. Feeling aggrieved by the award of the learned Commissioner, the second respondent-Insurance Company preferred the present appeal.

8. The contention of the learned counsel for the second respondent is two fold:

(1) The learned Commissioner lacks inherent jurisdiction to entertain the petition as the petitioner failed to establish employer and employee relationship between the first respondent and the deceased.

(2) The learned Commissioner awarded compensation on the sole ground that the motor cycle was insured with the second respondent as on the date of the accident.

9. There is no representation on behalf of the petitioner-claimant.

10. Now the points that arise for consideration in this appeal are:

(1) Whether the employer-employee relationship exists between the first respondent and the deceased as on the date of the accident?

(2) Whether the order passed by the learned Commissioner is sustainable either on facts or on law?

Point Nos.1 and 2:

11. Both the points are interlinked with each other; hence, I am inclined to address these two points simultaneously to avoid recapitulation of facts and evidence.

12. In order to claim compensation under the Workmen's Compensation Act, establishment of employer-employee relationship is *sine qua non*. A perusal of the record reveals that the accident occurred due to the rash and negligent act of the deceased. As per the recitals of Ex.A1–F.I.R., the deceased himself drove the motor cycle in a rash and negligent manner and dashed the cyclist. The Station House Officer, Mulugu Police Station registered a case in Crime No.44 of 2003 under Sections 337 and 304A IPC against the deceased. The case was closed in view of the death of the deceased. A perusal of Exs.A2 and A3 (Inquest report and Post-mortem report respectively) reveals that the deceased died due to the injuries sustained in the accident that occurred on 16.4.2003. A perusal of Ex.A5 (Policy Cover Note) reveals that the motor cycle of the first respondent was insured with the second respondent–Insurance Company as on the date of the accident.

13. A perusal of the record reveals that the first respondent did not submit the claim form to the second respondent stating that by the time of the accident, the deceased was working under his control. The first

respondent has taken a specific plea in the counter that the deceased has been working as employee in his Fertilizers shop. The first respondent is the competent person to say whether he has been running Fertilisers shop or not and the deceased was working in his shop or not. For the reasons best known to the first respondent, he did not choose to appear before the Commissioner. The petitioner has not taken any steps to examine the first respondent to substantiate her stand that by the time of the accident the deceased was working under the control of the first respondent. Absolutely there is no material on record that the first respondent was having Fertilisers shop as on the date of the incident. In such circumstances, the possibility of engaging the deceased by the first respondent for collection of money is improbable and unbelievable. The learned Commissioner lost sight of this vital aspect. The learned Commissioner proceeded on a premise as if there is a statutory obligation on the part of the second respondent to pay compensation to the claimant, even if the premium is not paid covering the risk of driver of the vehicle. There is no doubt that Section 147 of the Motor Vehicles Act mandates that the insured has to pay premium covering the risk of the driver of the vehicles. There is no provision under the Motor Vehicles Act to pay premium covering the risk of the rider of the motor cycle. The learned Commissioner fastened the liability on the second respondent on the sole ground that the motor cycle driven by the deceased was insured with it. It is not the case of the claimant or first respondent that Ex.B1 Policy covers the risk of employees engaged by the first respondent. It is equally an admitted fact that Ex.B1 does not cover the risk of rider of motor cycle. There is no statutory or contractual obligation on the part of the second respondent to pay compensation to the claimant basing on Ex.B1. The finding of the learned Commissioner that the second respondent has to pay compensation to the claimant in view of Ex.B1 is not sustainable either on facts or on law. It is needless to say that if the finding of the

Commissioner is based on no evidence or on irrelevant or inadmissible evidence the same is liable to be set aside.

14. I have carefully scanned the order passed by the learned Commissioner. Conspicuously, there is no finding as to the existence of jural relationship of employer and employee between the first respondent and the deceased as on the date of the accident. Without a specific finding that the deceased was working under the control of the first respondent as on the date of the accident, the Commissioner is not entitled to award compensation under the provisions of the Workmen's Compensation Act. Interestingly, as observed earlier, without such a finding of the learned Commissioner has awarded compensation. If the claimant fails to establish jural relationship of employer and employee, the Commissioner lacks inherent jurisdiction to entertain the petition. Even assuming, but not admitting, that the deceased was working as an employee under the control of the first respondent, he alone has to pay the compensation to the petitioner, even if the alleged duties discharged by the deceased falls within the definition of 'workman' as provided under Section 2(1)(n) of the Workmen's Compensation Act.

15. Having regard to the facts and circumstances of the case, I am of the considered view that the learned Commissioner, without considering the existence or non-existence of jural relationship of employer and employ between the first respondent and the deceased, awarded compensation against the second respondent under the Workmen's Compensation Act. Such a finding is merely based on the fact that the motor cycle bearing No.AP 36K 5915 was insured with the second respondent as on the date of the accident. Therefore, the order passed by the learned Commissioner is not sustainable either on facts or on law. Accordingly, point Nos.1 and 2 are answered.

16. In the result, the appeal is allowed, setting aside the order dated

29.9.2004 in W.C. Case No.33 of 2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Warangal-I. However, it is made clear that the second respondent is not entitled to recover the compensation amount if any withdrawn by the petitioner. If any amount deposited by the second respondent is available in the credit of the present case (W.C. Case No.33 of 2003), the second respondent is entitled to withdraw the same by following due process of law. There shall be no order as to costs. Miscellaneous applications, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 05th August, 2015.

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