

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.988 OF 2005

JUDGMENT:

This appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 (the Act), challenging the order dated 01.7.2005 passed in W.C. Case No.2 of 2003 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Kakinada.

2. The parties to this appeal will be referred to as they are arrayed before the learned Commissioner, to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows: The first applicant is the father, second applicant is mother and applicant Nos.3 to 6 are sisters and brothers of Kamidi Govaraju. They filed the application under Section 22 of the Act alleging that Govaraju (hereinafter referred to, as the deceased) died due to electric shock out of and in course of employment. The further case of the applicants is that opposite party Nos.1 and 2 have engaged the deceased as farm servant. They claimed compensation of Rs.2,00,000/-.

4. The opposite party Nos.1 and 2 filed separate counters denying all the averments made in the application including the age, income of the deceased, *inter alia*, contending that by the time of unfortunate incident, the deceased was not working as a farm servant of opposite parties.

5. Basing on the rival contentions, the learned Commissioner has framed two issues. During the course of enquiry, on behalf of the applicants, A.Ws.1 to 3 were examined and Exs.A1 to A7 were marked. On behalf of opposite parties, R.Ws.1 to 3 were examined and Ex.R1 was marked.

6. On analysing the oral, documentary evidence and other material available on record, learned Commissioner arrived at the conclusion that by the time of death, the deceased was working as a farm servant of opposite party No.1, and allowed the application in part by awarding an amount of Rs.1,14,270/- towards compensation. The application against opposite party No.2 was dismissed. Feeling aggrieved by the orders of the learned Commissioner, opposite party No.1 preferred the present appeal.

7. The contention of learned counsel for the appellant–opposite party No.1 is three fold:

(1) the learned Commissioner has not considered the oral testimony of R.Ws.1 to 3 in right perspective;

(2) the learned Commissioner has not considered the recitals of Ex.A4 and allowed the application on assumptions and presumptions; and

(3) the finding of learned Commissioner that there exists employer-employee relationship between opposite party No.1 and the deceased is not sustainable either on facts or in law.

8. None appeared on behalf of the applicants.

9. The substantial question that falls for consideration in this appeal is:

Whether the learned Commissioner is justified in awarding compensation of Rs.1,14,270/- to the applicants even though there was no employer-employee relationship between opposite party No.1 and the deceased?

Question:

10. To substantiate the case, applicant No.2 examined herself as A.W.1. A.Ws.2 and 3 were examined to prove employer-employee relationship between opposite party No.1 and the deceased. To demolish the stand of the applicants, opposite party Nos.1 and 2 examined themselves as R.Ws.1 and 3 respectively. R.W.2 was examined to establish that there was no employer-employee

relationship between opposite party No.1 and the deceased. A.W.1 being the mother of the deceased, the possibility of distortion of facts in order to claim more compensation from opposite parties cannot be ruled out completely. Likewise, R.Ws.1 and 3 are interested witnesses; therefore, possibility of deposing in such a manner to suit to their stand.

11. As per the testimony of A.Ws.2 and 3, by the time of death, the deceased was working as a farm servant of opposite party No.1. In the cross-examination of these witnesses, nothing is elicited to shake their testimony. As per the testimony of R.Ws.1 and 3, the applicants have foisted a false case against them at the instance of villagers. In the cross-examination of A.Ws.1 and 3, it is not positively elicited that the applicants have filed the present application at the instance of particular specific villagers in order to take vengeance against opposite parties. In the counter, the names of the villagers at whose instance, the applicants have filed the present application are not mentioned. It is not uncommon to take this type of defences in order to defeat the claim of the applicants. It is elicited in the cross-examination of R.W.1 that he has been looking after the lands of opposite party No.2, who was residing in Kakinada at the relevant point of time. Opposite party Nos.1 and 2 are own brothers. The material available on record clinchingly establishes that opposite party No.1 has been cultivating an extent of Acs.6.00 including fish tank. Let me consider the documentary evidence in the backdrop of above facts.

12. A perusal of Exs.A1, A2 and A5 clearly reveals that deceased died on 22.3.1999 due to electric shock. To substantiate the argument, learned counsel for the appellant has drawn my attention to Ex.A4 calendar and judgment in C.C. No.537 of 2000 on the file of Special Mobile Magistrate Court, Kakinada. A perusal of Ex.A4 clearly reveals that opposite party No.1 has not obtained electricity connection to the

fish tank. The case of the prosecution is that opposite party No.1 was pilfering electricity by illegal means. In such circumstances, there is no necessity for opposite party No.1 to take electricity service connection. Mere non-obtaining electricity service connection by opposite party No.1 by itself would not be a valid ground to discard the version put forth by the applicant. The opposite party No.1 was acquitted in the criminal case, on the sole ground that the Investigating Officer was not examined. No doubt, the court can take into consideration the judgment in a criminal case in order to ascertain truthfulness or otherwise of the version put forth by the applicants. Even as per Ex.R1—rough sketch of scene of offence, opposite party Nos.1 and 2 are having fish tanks. There is a live electric wire near their fish tanks. Ex.A6 is the First Information Report in Crime No.38 of 1999 of Coringa Police Station under Section 174 Cr.P.C., registered on 22.3.1999. As per the recitals of Ex.A6, the deceased was working as a farm servant of opposite parties. In Ex.A7 remand report and Ex.A3 charge sheet, it is clearly mentioned that by the time of his death, the deceased was working as a farm servant of opposite party No.1. The Investigating Officer, basing on the statements of the villagers, came to the conclusion that by the time of unfortunate incident, the deceased was working as farm servant of opposite party No.1.

13. The material placed before the learned Commissioner clinchingly establishes that the dead body of the deceased was found on the fish tank bund of opposite party No.1. If really, the deceased was not engaged as a farm servant how his dead body was found on the fish tank bund of opposite party No.1 is not properly explained by opposite party No.1. It is very difficult to secure the documentary evidence to establish employer-employee relationship between a ryot and a farm servant. It is a common knowledge that a farm servant will work under a ryot basing on oral understanding. No farm servant will issue receipt acknowledging receipt of salary or remuneration from the

ryot. While deciding the cases of this nature, the court shall not lose sight of ground realities. The court cannot expect documentary evidence in each and every case more particularly from a rustic villagers who belong to unorganised sector. In spite of several handicaps, fortunately the applicants have produced documentary evidence to establish employer-employee relationship between opposite party No.1 and the deceased. The recitals of Exs.A1 to A7 clinchingly establish employer-employee relationship between opposite party No.1 and the deceased. In fact, Ex.R1 supports the version of the applications that the deceased died near the fish tank of opposite party No.1 due to electric shock.

14. After having due consideration to the oral and documentary evidence placed before him, learned Commissioner arrived at the conclusion that there exists employer-employee relationship between opposite party No.1 and the deceased as on 22.3.1999. Basing on the facts pleaded and proved, the irresistible conclusion that can be drawn is that there exists employer-employee relationship between opposite party No.1 and the deceased. There are no grounds much less valid grounds to interfere with the findings recorded by the learned Commissioner on this aspect.

15. It is a matter of common knowledge, in the villages minor children may also work as farm servants. Even by attending coolie work, one may get not less than Rs.50/- per day. However, the learned Commissioner has taken the income of the deceased as Rs.1,000/-. The applicants have not filed appeal or cross-objections challenging the quantum of compensation. Therefore, there is no option to this court except to assess the income of the deceased as Rs.1,000/- per month. The learned Commissioner has taken the multiplier as 228.540 taking the age of the deceased as 13 years. The learned Commissioner has awarded just and reasonable compensation of

Rs.1,14,270/-. Viewed from any angle, I am unable to accede to the contention of learned counsel for opposite party No.1 that the quantum of compensation awarded by the learned Commissioner is on higher side. The appeal lacks merits and bona fides. Hence, the appeal is liable to be dismissed. Accordingly, the question is answered.

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: 21.9.2015.

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