

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.716 OF 2005

JUDGMENT:

This appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 (the Act), challenging the order dated 22.3.2005 passed in W.C. Case No.144 of 2004 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad.

2. The parties to this appeal will be referred to as they are arrayed before the learned Commissioner, for the sake of convenience.

3. The facts leading to filing of the present appeal are briefly as follows: The applicant No.1 is the wife, applicant Nos.2 and 3 are sons, and applicant No.4 is mother-in-law of Chimala Narsimha (hereinafter referred to as, the deceased). The case of the applicants is that the deceased was engaged as loading and unloading coolie on tractor-trailer bearing Nos.AP 24A 8099 and AP 24A 4615. It is the further case of the applicants that the deceased died in a motor vehicle accident that occurred on 07.7.2004 out of and in course of his employment. The tractor-trailer, which belongs to opposite party No.1, was insured with opposite party No.2. Therefore, opposite party Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.5,00,000/-.

4. Opposite party No.1 filed counter admitting that the deceased was working as a labourer on his tractor-trailer on a monthly wages of Rs.3,000/-. The tractor-trailer bearing Nos.AP 24A 8099 and AP 24A 4615, was insured with opposite party No.2; therefore, opposite party No.2 alone is liable to pay compensation, if any, to the claimants. Hence, the application is liable to be dismissed against this opposite party.

5. Opposites party No.2 filed counter denying all the averments made in the application, *inter alia*, contending that there was no employer-employee relationship between opposite party No.1 and the deceased at the relevant point of time. The applicants are not entitled to claim compensation unless they prove that the driver of tractor-trailer was having valid and effective driving licence as on the date of the accident. The policy issued by this opposite party does not cover the risk of employee; therefore, opposite party No.1 alone is liable to pay compensation, if any, to the applicants. Hence, the application is liable to be dismissed against this opposite party.

6. Basing on the above pleadings, the learned Commissioner has framed seven issues. During the course of enquiry, on behalf of the applicants, A.W.1 was examined and Exs.A1 to A6 were marked. On behalf of opposite party No.1, no oral or documentary evidence was adduced. On behalf of opposite party No.2, R.W.1 was examined and Exs.B1 and B2 were marked.

7. On analysing the oral, documentary evidence and other material available on record, learned Commissioner arrived at a conclusion that the deceased died out and in course of employment and allowed the application in part by awarding an amount of Rs.2,25,077/- towards compensation with interest at 9% per annum from the date of filing of the claim petition i.e., 16.8.2004. Feeling aggrieved by the order of the learned Commissioner, opposite party No.2 preferred the appeal.

8. The contention of learned counsel for the appellant–opposite party No.2 is three fold:

- (1) Ex.B1 policy does not cover the risk of employees engaged in the tractor and trailer and that aspect was not considered by the learned Commissioner;
- (2) Learned Commissioner committed grave error while placing reliance on proviso 4 of IMT 39 and allowed the application on assumptions and presumptions; and

(3) the findings recorded by the learned Commissioner are not sustainable either on facts or in law.

Per contra, learned counsel for the applicants submitted that the opposite party No.1 paid extra premium of Rs.25/- under Ex.B1 policy covering the risk of labourer engaged on the tractor-trailer; therefore, there is a contractual obligation on the part of opposite party No.2 to indemnify the liability of opposite party No.1. He further submitted that the learned Commissioner rightly considered IMT 39 and allowed the application. He also submitted that the findings recorded by the learned Commissioner are supported by evidence much less legally admissible evidence; therefore, the appeal is liable to be dismissed.

9. Basing on the rival contentions, the substantial question of law that arises for consideration in this appeal is:

Whether there is any contractual obligation on the part of opposite party No.2 to indemnify the liability of opposite party No.1 in respect of the death of a coolie engaged on the tractor-trailer?

Question:

10. The following admitted facts can be culled out from the facts pleaded and proved. The tractor-trailer in question belongs to opposite party No.1. Opposite party No.1 engaged the deceased on his tractor-trailer as a labourer for the purpose of loading and unloading. The accident occurred due to the rash and negligent driving of the driver of the tractor-trailer. The deceased died due to the injuries sustained in the accident that occurred on 07.7.2004.

11. The material placed before the learned Commissioner clinchingly establishes that the deceased died out of and in course of employment. In the grounds of appeal, opposite party No.2 has not taken specific ground that there was no employer-employee relationship between opposite party No.1 and the deceased. In fact, opposite party No.1 filed counter admitting that as on the date of the accident, the deceased was engaged as a labourer on his tractor-

trailer. The material placed before the learned Commissioner clinchingly established the employer-employee relationship between opposite party No.1 and the deceased.

12. The oral testimony of R.W.1 coupled with Ex.B1 clearly reveals that the tractor-trailer, which belongs to opposite party No.1, was insured with opposite party No.2 with effect from 19.6.2004 to 18.6.2005. It is needless to say that the policy issued by opposite party No.2 shall cover the risk of driver of the vehicle. There is no need to pay extra premium to cover the risk of the driver. However, as rightly pointed out by the learned counsel for opposite party No.2, there is no statutory obligation on the part of the insurer to indemnify the liability of insured in respect of death or bodily injury of an employee unless the insured pays the extra premium covering the risk of the employee. The crime vehicle was validly insured with opposite party No.2—Insurance Company as on the date of the accident. A perusal of Ex.B1 reveals that opposite party No.1 paid an amount of Rs.25/- covering the risk of employee engaged on tractor-trailer. The learned Commissioner has extracted the relevant portion of Proviso 4 of IMT 39 in para 27 of the order. By accepting the extra premium of Rs.25/-, opposite party No.2 has undertaken to indemnify the liability of opposite party No.1 in respect of bodily injury or death of workman engaged on the tractor-trailer. In the cross-examination, R.W.1 in unequivocal terms deposed that opposite party No.1 paid extra premium of Rs.25/- covering the risk of employee. The contention of learned counsel for the opposite party No.2 that opposite party No.1 paid an amount of Rs.25/- covering the risk of driver only cannot be accepted. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of learned counsel for opposite party No.2 that Ex.B1 policy does not cover the risk of employee.

13. By the time of the accident, as per the recitals of Ex.A2—Inquest

Report, the deceased was aged about 36 years. Therefore, the learned Commissioner has taken the factor as 194.64. Except self-served testimony of the first applicant, there is no other convincing evidence to establish that by the time of death, the deceased was earning Rs.3,000/- per month. The learned Commissioner has taken the wage of the deceased as Rs.2,312.75 in view of G.O.Ms.No.30, L.E.T & F (Lab-II) Department, dated 27.7.2000. The learned Commissioner has followed the procedure contemplated under the W.C. Act and assessed the compensation amount as Rs.2,25,077/-. The learned Commissioner has rightly awarded interest at 9% per annum from the date of filing of the petition. Admittedly the claimants have not filed any appeal or cross-examinations challenging the quantum of compensation. The learned Commissioner has awarded just and reasonable compensation.

14. In the light of the foregoing discussion, I am unable to accede to the learned counsel for opposite party No.2 that the quantum of compensation awarded by the learned Commissioner is excessive. 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 appeal lacks merits and bona fides. Accordingly, the question is answered.

15. 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: 23.9.2015.

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