

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.1070 of 2005

JUDGMENT:

This civil miscellaneous appeal is filed under Section 30 of the Workmen's Compensation Act, assailing the order dated 29.8.2005, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour II, Guntur, (for short, the Commissioner) in W.C. Case No.31 of 2003, wherein and whereby the claim of the applicant for Rs.3,00,000/- was dismissed.

2. The appellant herein is the applicant and the respondent Nos.1 and 2 herein are the opposite party Nos.1 and 2 respectively in W.C. Case No.31 of 2003.

3. The facts leading to filing of the present appeal are briefly as follows: The applicant worked as a cleaner on the lorry bearing No.AP 7X 1661 belongs to the opposite party No.1. On 28.12.2002, at about 10.00 A.M., the lorry was being repaired in Shaik Saida's mechanic shed situated at Auto Nagar, Guntur. While attending the repairing work, the applicant sustained injuries on various parts of the body. He took treatment as inpatient in different hospitals at Guntur and spent huge amount towards medicines and treatment. Due to the injuries sustained, the applicant could not attend the duty and thereby lost his income. The lorry bearing No.AP 7X 1661 was insured with opposite party No.2; therefore, the opposite party Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.3,00,000/- to the applicant.

4. The opposite party No.1 remained ex parte. The opposite party No.2 filed counter, *inter alia*, denying the averments made in the application including the manner of the accident. It is contended that the applicant did not produce copy of the F.I.R., or medical certificate to establish that the applicant sustained injuries in the accident on 28.12.2002. The applicant filed the application with an ulterior motive

of claiming compensation as if he sustained injuries on 28.12.2002 while working as cleaner on the lorry bearing No.AP 7X 1661.

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

1. Whether the applicant was a workman as per the provisions of the Act and he received personal injuries in an accident arising out of and in the course of his employment making him physically disabled?
2. What was the age of the applicant at the time of accident?
3. What were the wages paid to the applicant at the time of accident?
4. What was the loss of earning capacity suffered by the applicant due to the accident?
5. Amount of compensation payable? and
6. Who are liable to pay the compensation?

6. During the course of inquiry, on behalf of the applicant, A.Ws.1 to 4 were examined and Exs.A1 to A8 were marked. On appreciating the oral, documentary evidence and other material available on record, the learned Commissioner arrived at a conclusion that the applicant failed to prove the factum of the accident and 'employee and employer' relationship between him and the respondent No.1, and accordingly dismissed the W.C. Case. As stated supra, feeling aggrieved by the order of the learned Commissioner, the applicant filed the present appeal.

7. The contention of the learned counsel for the appellant-applicant is that the Commissioner has, without properly appreciating the recitals of Exs.A1 to A8, dismissed the application on erroneous grounds. He further submitted that the Commissioner has not appreciated the factum of non-permitting the applicant to mark the General Diary entry and dismissed the application. **Per contra**, learned counsel for the second respondent-opposite party No.2 submitted that the Commissioner has considered the oral and

documentary evidence in right perspective and dismissed the application by assigning cogent and valid reasons. He further submitted that the applicant failed to prove the factum of the accident as well as the sustaining of the injuries by the applicant; therefore, the present appeal is liable to be dismissed.

8. Basing on the rival contentions, the following points arise for consideration:

(1) Whether the applicant had sustained injuries on 28.12.2002 in Shaik Saida's mechanic shed at Auto Nagar, Guntur while attending the repairing work of the lorry bearing No.AP 7X 1661 belongs to the opposite party No.1?

(2) Whether the applicant will fall within the definition of 'workman' as contemplated under Workmen's Compensation Act?

Points:

9. The point Nos.1 and 2 are interlinked with each other; hence, I am inclined to address both the points simultaneously in order to avoid recapitulation of the facts and the evidence.

10. To substantiate the case, the applicant examined himself as A.W.1. A.W.3 was examined to prove the factum of repairing of the lorry bearing No.AP 7X 1661 in his shed on 28.12.2002. To prove the factum of employment of the applicant, A.W.4 was examined.

11. The burden of proof lies on the applicant to establish the factum of accident as narrated in the application. In order to claim compensation under the Workmen's Compensation Act, the applicant has to establish that he was working as a cleaner on the lorry under the control of the first respondent. The first respondent, who is the owner of the lorry, is the competent person to say whether the applicant was working as a cleaner in the lorry bearing No.AP 7X 1661. For the reasons best known, the first respondent did not choose to file counter in W.C. Case No.31 of 2003 admitting that the applicant was working as a cleaner on his lorry at the relevant point of time. If

really the applicant was working as a cleaner on the lorry under the control of the first respondent, what prevented him to admit the same at the earliest point of time by filing counter. No doubt, the first respondent was examined as A.W.4. Except the self-served testimony of the first respondent, no single scrap of paper was filed to establish that the applicant was working as a cleaner on the lorry under his control at any point of time much less as on 28.12.2002. The possibility of A.W.4 deposing false, in order to help the applicant, cannot be ruled out completely. It is a known factum that the injured person may intimate the factum of accident to the Police concerned directly or from the hospital or after discharge from the hospital.

12. In order to ascertain the truthfulness or otherwise of the version putforth by the applicant, the test to be applied is whether he acted as an ordinary prudent man or not. The material available on record clinchingly established that the applicant has not acted as an ordinary prudent man to report the factum as well as manner of the accident to the Police. This is one of the important aspects that has to be considered by the Commissioner or this court.

13. As per the testimony of A.W.2, the petitioner has sustained injuries one week prior to the admission in the hospital. The petitioner was admitted in the hospital on 31.12.2002. If the testimony of A.W.2 is taken into consideration, the applicant might have sustained injuries on 23.12.2002 but not on 28.12.2002. Neither the applicant nor A.W.3 or A.W.4 produced single scrap of paper to establish that the lorry bearing No.AP 7X 1661 got repaired on 28.12.2002 in the mechanic shed of A.W.3. While disposing of the matters arising out of the Workmen's Compensation Act, the approach of the Commissioner or the court should be pragmatic but not pedantic. The Workmen's Compensation Act is a piece of social legislation made for the benefit of the workmen. The court shall not insist on technicalities while deciding the matters arise out of the Workmen's Compensation Act.

That does not mean the court can allow the applications without proper scrutiny. In this case, the learned Commissioner has taken pains in order to ascertain the truthfulness or otherwise of the version put forth by the applicant. The finding of the Commissioner that the first respondent and the applicant might have colluded is supported by material available on record. The evidence adduced by the applicant falls short to establish that he sustained injuries on 28.12.2002 while repairing lorry bearing No.AP 7X 1661 in Shaik Saida's mechanic shed at Auto Nagar, Guntur. The applicant also failed to establish that by the time of the alleged accident, he was working as cleaner on the lorry bearing No.AP 7X 1661 belongs to the first respondent.

14. Having regard to the facts and circumstances of the case, I am of the considered view that 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. The points are 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: 03.7.2015
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