

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.647 OF 2005

JUDGMENT:

This civil miscellaneous appeal is preferred under Section 30 of the Workmen's Compensation Act, challenging the order dated 10.1.2005 in W.C. No.47 of 2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad.

2. For the sake of convenience, the parties to this civil miscellaneous appeal will be referred to as they are arrayed before the lower authority.

3. The facts leading to filing of the present civil miscellaneous appeal are briefly as follows: One K.Bhoopal Reddy, who is the son of the applicants, was employed as an electrician on contract basis by opposite party No.1 in the year 1999. On 17.8.2002, as per the directions of the officials of opposite party No.1 (Sri S.Venkatesh, Assistant Engineer and Sri Sailu, Assistant Lineman), Bhoopal Reddy was attending the repair work by climbing on an electric poll in the Military Area, Golconda and fell down from the poll due to electric shock. Bhoopal Reddy died on 19.8.2002 while undergoing treatment in Apollo Hospital, Hyderabad. The Station House Officer, Golconda Police Station registered a case in Crime No.130 of 2002 under Section 304A IPC. The further case of the applicants is that Bhoopal Reddy (hereinafter referred to as 'the deceased') died out of and in the course of his employment. By the time of the death, the deceased was aged about 31 years and getting wages of Rs.3,000/- per month. The applicant Nos.1 and 2, who are father and mother of the deceased, are dependants on the income of the deceased. Hence, the application.

4. The opposite party No.1 filed counter denying all the averments made in the application including the manner of the accident, age and income of the deceased, *inter alia*, contending that opposite party No.2 entered into an agreement with opposite party No.1 in order to attend the minor works including the repairs on electric polls in Golconda Area. Opposite party No.2 engaged the deceased in execution of the said works. Andhra Pradesh Central Power Distribution Company Limited (APCPDCL) never engaged the deceased in any capacity at any point of

time. It is absolutely false to state that as per the instructions of the Assistant Engineer and the Assistant Lineman, on 17.8.2002 the deceased climbed electric poll and received head injury by falling from it. The deceased died due to his negligence only. Opposite party No.1 paid an amount of Rs.22,000/- to the applicants towards *ex gratia* and funeral expenses. Hence, the application may be dismissed.

5. The opposite party No.2 remained *ex parte*.

6. Basing on the rival contentions, the learned Commissioner framed three issues. During the course of enquiry, on behalf of the applicants, the first applicant examined himself as A.W.1 and got marked Exs.A1 to A11. On behalf of the opposite parties, no oral or documentary evidence was let in.

7. On appraising the oral, documentary evidence and other material available on record, the learned Commissioner arrived at a conclusion that the deceased died out of and in the course of his employment, and allowed the application in part by awarding compensation of Rs.3,09,011/- and directing the opposite party Nos.1 and 2 to deposit the same by way of demand draft, drawn on any Nationalised Bank, in favour of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad, within thirty (30) days from the date of receipt of the order. Feeling aggrieved by the order of the learned Commissioner, opposite party No.1 preferred the present civil miscellaneous appeal.

8. Sri R.Vinod Reddy, learned standing counsel for opposite party No.1 attacked the order of learned Commissioner on the following three grounds:

(1) The learned Commissioner lacks inherent jurisdiction to entertain the application under Section 22 of the W.C. Act as there was no employer-employee relationship between opposite party No.1 and the deceased;

(2) The finding of the learned Commissioner that the deceased died out of and in the course of employment is not supported by oral and documentary evidence; and

(3) The amount of compensation awarded by the learned Commissioner is on higher side.

Per contra, Sri S.A.K. Mynuddin, learned counsel for the applicants submitted that the averments made in the counter of Opposite Party No.1 clearly reveals that employer-employee relationship between opposite party No.1 and the deceased; therefore, the application is maintainable under Section 22 of the

W.C. Act. He further submitted that the finding of the learned Commissioner that the deceased died out of and in the course of his employment is supported by oral and documentary evidence. He further submitted that there are no grounds much less valid grounds to interfere with the well considered order passed by the learned Commissioner.

9. Basing on the rival contentions, the substantial questions of law that arise for consideration in this appeal are:

(1) Whether there exists employer-employee relationship between opposite party No.1 and the deceased?

(2) Whether the deceased died out of and in the course of his employment? If so, the applicants are entitled for compensation?

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Point Nos.1 and 2:

11. Both the questions are interlinked with each other; hence, I am inclined to answer them simultaneously in order to avoid recapitulation of facts and evidence.

12. To substantiate the case, the first applicant examined himself as A.W.1 and got marked Exs.A1 to A11. To demolish the stand of the applicants, no oral or documentary evidence was adduced on behalf of the opposite parties. Establishment of employer-employee relationship between opposite parties and the deceased is *sine qua non* to entertain the application under Section 22 of the W.C. Act. As seen from the testimony of A.W.1, the deceased was engaged as an electrician to attend the repair works on electric polls in Golconda area. As per the testimony of A.W.1, on 17.8.2002 his son fell down from the electric poll due to electric shock, sustained head injury and died on 19.8.2002 while undergoing treatment in Apollo Hospital, Hyderabad. In the cross-examination of A.W.1, nothing is elicited to shake his testimony so far as the factum of death of the deceased is concerned.

13. As per the recitals of Ex.A1 (F.I.R) and Ex.A2 (complaint), the deceased fell down from electric poll due to electric shock, sustained head injury and died. As per the recitals of Ex.A3 (inquest report) and Ex.A4 (post-mortem examination report), the deceased died due to head injury. As per the recitals of Ex.A4 (charge sheet) the deceased died due to rash and negligent act of Sri Venkatesh, Assistant Engineer and Sri Sailu, Assistant Lineman. A perusal of Ex.A7 (newspaper clipping) also

reveals that the deceased died due to electric shock. A perusal of Ex.A9 (copy of ration card) reveals that the deceased completed 10th class. A perusal of Exs.A10 and A11 clearly reveals that the deceased obtained diploma in ITI-Mechanical. The oral testimony of P.W.1 is fully supported by the recitals of Exs.A1 to A5 and A7. Basing on the oral and documentary evidence available on record, this court can safely arrive at a conclusion that the deceased died due to electric shock. A perusal of Ex.A6 reveals that the applicants submitted a representation to opposite party No.1 claiming compensation.

14. If really, the deceased was not engaged by opposite party No.2, what prevented opposite party No.1 to issue befitting reply to Ex.A6 legal notice. In the counter, opposite party No.1 categorically admitted that the deceased was engaged by opposite party No.2 to attend the repairing works on the electrical polls. In the counter, opposite party No.1 has taken a specific stand that opposite party No.2 was appointed as a contractor to attend the works including the repairing works on the electric polls in Golconda area. The material available on record clinchingly establishes that opposite party No.1 engaged opposite party No.2 to attend minor works. The opposite party No.2 engaged the deceased to attend the repairing works on the electric polls. It is a known fact that no private individual is permitted to climb electric polls and attend repairing works. It is not the case of the opposite party No.1 that on the ill-fated day, the deceased climbed the electrical poll without consent of the officials of opposite party No.1. As per the recitals of Ex.A5 (charge sheet) on 17.8.2002, the deceased was attending the repairing work on the electric poll as per the instructions of Sri Venkatesh, Assistant Engineer and Sri Sailu, Assistant Lineman. The recitals of Ex.A8 also fully support the version of the applicants. In view of Section 12 of the W.C. Act, the applicants are entitled to claim compensation either from the opposite party No.2 (contractor) or opposite party No.1 (principal employer). The material available on record clinchingly establishes that the deceased died on 19.8.2002 due to electrocution out of and in the course of his employment.

15. As per the recitals of Ex.A9 dated 06.6.1981, the deceased was aged about 31 years by the time of his death. The learned Commissioner has rightly taken the factor 205.95. Taking into consideration the recitals of Exs.A10 and A11, the learned Commissioner arrived at the conclusion that the deceased is a skilled worker. The learned commissioner has determined the wages of the deceased as Rs.2,990/- per

month basing on the Notification No.Q2/15924/94 published in the A.P. Gazette dated 25.7.1995. The compensation for which the applicants are entitled to is $\text{Rs.}2,990 \times 50/100 \times 205.95 = \text{Rs.}3,07,895/-$. The learned Commissioner has also awarded Rs.616/- towards stamp duty and Rs.500/- towards advocate fee. The learned Commissioner has rightly awarded the compensation amount of Rs.3,09,011/-.

16. The learned Commissioner has considered the oral and documentary evidence in right perspective and arrived at a conclusion that there exists employer-employee relationship between opposite parties and the deceased and the deceased died out of and in the course of employment. The findings recorded by the learned Commissioner are supported by the evidence much less legally admissible evidence. There are no grounds much less valid grounds to interfere with the well-considered order passed by the learned Commissioner. There is no question of law much less substantial question of law that arises in this civil miscellaneous appeal. Accordingly, the questions are answered.

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

T.SUNIL CHOWDARY, J.

Date: 13.10.2015.

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