

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.1104 OF 2005

JUDGMENT:

1 This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, challenging the Order, dated 27.06.2005 passed in W.C.No.241 of 2004 on the file of the Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour-III, Hyderabad.

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

3 The facts that led to the filing of the present appeal, briefly, are as follows:

4 The applicants filed an application under Section 22 of the Workmen's Compensation Act claiming compensation of Rs.3,50,000/- from the Opposite Parties for the death of one Ramulu in a road accident that occurred on 02.12.2004 out of and during the course of employment. First petitioner is wife, second petitioner is daughter, third petitioner is son and petitioner Nos.4 and 5 are parents of the said Ramulu (hereinafter referred to as 'the deceased'). It is the further case of the applicants that the deceased was engaged as cooli on the lorry bearing No.ATT 5252, which belongs to the Opposite Party No.1 and insured with the Opposite Party No.2 as on the date of accident. Therefore, the Opposite Party Nos.1 and 2 are jointly and severally liable to pay compensation to the applicants. As on the date of accident, the deceased was aged 25 years and used to earn Rs.3,000/- p.m. Hence the petition.

5 Opposite Party No.1 filed counter admitting that on 02.12.2004 the deceased was engaged in the lorry bearing No.ATT 5252 for the

purpose of loading and unloading of bricks and that the said lorry was insured with the Opposite Party No.2 as on the date of accident. Therefore, the Opposite Party No.2 alone is liable to pay compensation, if any, to the applicants.

6 Opposite Party No.2 filed counter denying all the averments made in the petition including the manner of accident, age and income of the deceased, inter alia, contending that there was no employer and employee relationship between the Opposite Party No.1 and the deceased as on 02.12.2004, therefore, the petition is liable to be dismissed. The amount of compensation claimed by the applicants is excessive and exorbitant. Hence the petition may be dismissed.

7 Basing on the above pleadings, the learned Commissioner framed three issues for trial.

8 During the course of enquiry, on behalf of the applicants, the widow of the deceased was examined as A.W.1 and Exs.A.1 to A.6 were marked. On behalf of the Opposite Party No.1, R.W.1 was examined, but no documents were marked. On behalf of the Opposite Party No.2, no oral evidence was adduced but the copy of the insurance policy was marked as Ex.D.1.

9 On appreciating 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 course of employment and allowed the petition in part by awarding compensation of Rs.2,52,674/- and directed the Opposite Parties to deposit the said amount within 30 days from the date of receipt of the order, failing which, the applicants are entitled to interest @ 9% p.a. on the amount of compensation from the date of filing of the application i.e.30.12.2004. Feeling aggrieved by the said order of

the learned Commissioner for Workmen's Compensation, the Opposite Party No.2-insurer preferred the present appeal.

10 The contention of the learned counsel for the applicant is three fold. **1)** There is no employer and employee relationship between the Opposite Party No.1 and the deceased, therefore, the petition is not maintainable, **2)** The amount of compensation awarded by the learned Commissioner is on higher side and **3)** as per the terms and conditions of Ex.D.1 policy, there is no obligation on the part of the Opposite Party No.2 to indemnify the liability of the Opposite Party No.1 in respect of death or bodily injury of workman employed as casual labour.

11 *Per contra*, the learned counsel for the applicants submitted that the finding of the learned Commissioner that there exists employer and employee relationship between the Opposite Party No.1 and the deceased is supported by oral and documentary evidence. He further submitted that the learned Commissioner has awarded just and reasonable compensation.

12 On the other hand, the learned counsel for the Opposite Party No.1 submitted that the Opposite Party No.2 alone has to pay the compensation to the applicants in view of the terms and conditions of Ex.D.1 insurance policy.

13 Basing on the above rival contentions, the substantial questions of law that emerge for determination in this appeal are as follows:

- i) Whether there exists employer and employee relationship between the Opposite Party No.1 and the deceased as on 02.12.2004?
- ii) Whether the amount of compensation awarded by the learned Commissioner is on higher side?
- iii) Whether Ex.D.1 insurance policy does not cover the

risk of the deceased?

Point No.1:

14 Establishment of employer and employee relationship between the Opposite Party No.1 and the deceased is sine qua non to entertain the petition under section 22 of the W.C. Act. To substantiate the case, the first applicant examined herself as A.W.1 and got marked Ex.A.1 to A.6. The Opposite Party No.1 also examined R.W.1. But no oral or documentary evidence was adduced to substantiate the stand of the Opposite Party No.2. As per the testimony of A.W.1 and R.W.1, the deceased sustained injuries in a road accident that occurred on 02.12.2004. The testimony of these two witnesses clingingly establishes that by the time of accident, the deceased was travelling in the lorry bearing No.ATT 5252 for the purpose of loading and unloading of bricks. The recitals of Ex.A.1-FIR would clearly go to show that by the time of accident, the deceased was travelling in the said lorry. The recitals of Ex.A.2-certified copy of inquest panchanama, Ex.A.3 certified copy of post-mortem examination report also go to show that the deceased died due to injuries sustained in a road accident that occurred on 02.12.2004. As per Ex.A.1-FIR, the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ATT 5252. In the cross-examination A.W.1 and R.W.1 nothing is elicited to shake their testimony so far as the factum of travelling of the deceased in the lorry for the purpose of loading and unloading of bricks is concerned. The oral testimony of A.W.1 and R.W.1 is fully supported by the recitals of Exs.A.1 to A.3 so far as the employer and employee relationship between the Opposite Party No.1 and the deceased is concerned. The material available on record clinchingly establishes that the deceased died out of and during the course of employment and there exists employer and employee relationship

between the Opposite Party No.1 and the deceased. The learned Commissioner has assigned cogent and valid reasons to his findings on this issue. Having regard to the material available on record the irresistible conclusion that can be arrived at is that the deceased died out of and during the course of employment. Therefore, the contention of the learned counsel for the Opposite Party No.2 that there is no employer and employee relationship between Opposite Party No.1 and the deceased cannot be countenanced. The point is answered accordingly.

Point No.2:

15 By the time of accident, the deceased was aged about 25 years. The learned Commissioner has taken the factor as 216.91 taking into consideration of the age of the deceased. Except the self serving testimony of A.W.1, there is no other documentary evidence to show that the deceased was earning Rs.3,000/- p.m. The fact remains that the deceased was cooli by profession. In the absence of any documentary evidence, there is no other option except to place reliance on the Orders or Notifications issued by the Government from time to time under Minimum Wages Act. The learned Commissioner has arrived at a conclusion that the deceased may earn Rs.2,320-50 ps p.m. basing on the G.O.Ms.No.30 LET &F (Lab-II) dated 27.7.2000. The learned Commissioner by following the procedure contemplated under the W.C.Act arrived at a conclusion that the applicants are entitled for an amount of Rs.2,51,670/- towards compensation. The learned Commissioner has considered the various provisions of the W.C.Act and allowed the petition. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the Opposite Party No.2 that the amount of compensation awarded by the learned Commissioner is on higher side. Accordingly, this point is answered.

Point No.3:

16 It is an admitted fact that the lorry bearing No.ATT 5252, which belongs to the Opposite Party No.1 was insured with the Opposite Party No.2 with effect from 27.07.2004 to 26.07.2005. Ex.D.1 insurance policy was in force as on the date of accident i.e. 02.12.2004. A perusal of Ex.D.1 reveals that the Opposite Party No.1 paid an amount of Rs.50/- covering the risk of two employees under W.C.Act. The Opposite Party No.1 also paid an amount of Rs.75/- covering the risk of employees engaged on the lorry. It is not in dispute that as on the date of accident the deceased was engaged on the lorry for the purpose of loading and unloading of bricks. The terms and conditions of Ex.D.1 insurance policy covers the risk of a workman. Therefore, there is a contractual and statutory obligation on the part of the Opposite Party No.2 to indemnify the liability of Opposite Party No.1 in respect of bodily injury or death of a workman. Therefore, the Opposite Party Nos.1 and 2 are jointly and severally liable to pay compensation to the applicants. In view of the terms and conditions of the Ex.D.1 - insurance policy, I am unable to accede to the contention of the learned counsel for the Opposite Party No.2 that there is no contractual obligation on the part of the Opposite Party No.2 to indemnify the liability of the Opposite Party No.1. The point is answered accordingly.

17 There are no grounds much less valid grounds to interfere with the well considered order of the learned Commissioner. The appeal lacks merits and bonafides and hence the same is liable to be dismissed as devoid of merit.

18 In the result, the appeal is dismissed. No order as to costs. As a sequel, the miscellaneous petitions, pending in this miscellaneous appeal, if any, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 21st September, 2015
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