

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY
CIVIL MISCELLANEOUS APPEAL No.811 of 2005

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JUDGMENT:

This civil miscellaneous appeal is filed under Section 30 of the Workmen's Compensation Act, challenging the order dated 30.10.2004, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Warangal-I, (for short, the Commissioner) in W.C. Case No.65 of 1999, wherein and whereby an amount of Rs.1,35,552/- was awarded as compensation with interest @ 6% per annum from the date of accident till the date of deposit of the amount as against the claim of Rs.1,35,552/-.

2. The parties will be hereinafter referred to as they are arrayed before the Commissioner in W.C. Case, to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows:

The applicant No.1 is the wife, applicants No.2, 3, 4, 5 and 6 are the children of Samuel and dependants on his income. The applicants have filed the petition under Section 22 of Workmen Compensation Act alleging that Samuel(herein after referred as 'the deceased') died on 11.11.1998 out of and during the course of employment. The further case of the applicants is that Opposite Party No.1 engaged the Samuel for the purpose of sweeping and cleaning of the premises of A.P.S.R.T.C. Bus Stand, Warangal.

4. The Opposite Party No.1 filed counter denying the relationship of employer and employee between him and the

deceased. The Opposite Party No.2 filed counter opposing the claim of the applicants on the ground that the Opposite Party No.1 alone is liable to pay compensation, if any, to the applicants.

5. Basing on the above pleadings, the Commissioner framed as many as five issues:

- (1) Whether the deceased Akulapalli Samuel is a workman as per the provisions of the Act, he died due to grievous injuries in an accident arising out of and in the course of his employment?
- (2) What was the age of the deceased at the time of accident?
- (3) What were the wages paid to the deceased at the time of accident?
- (4) How much quantum of compensation payable?
- (5) Who is liable to pay the compensation?

6. During the course of enquiry, on behalf of the applicants, P.Ws.1 and 2 were examined and Exs.A1 to A10 were marked.

Opposite Party No.1 examined himself as R.W.1, and Ex.B1 was marked. On behalf of Opposite Party No.2, R.W.2 was examined.

7. On analysis of the oral and documentary evidence and other material available on record, the learned Commissioner has arrived at a conclusion that by the time of the untimely death, the deceased was working as an employee under the control of Opposite Party No.1 and allowed the petition. Feeling aggrieved by the orders of the learned Commissioner, the Opposite Party No.2 – Corporation has preferred this appeal.

8. The contention of the learned counsel for the appellant– Opposite Party No.2 is that even assuming but not conceding that there exists a relationship of employer and employee between the Opposite Party No.1 and the deceased, the Opposite Party No.1 alone is liable to pay compensation, if any, to the applicants. He

further submitted that the finding of the learned Commissioner that by the time of death, the deceased was working as an employee under Opposite Party No.1 is not supported by any oral and documentary evidence. He further submitted that petition under Section 22 of Workmen Compensation Act is not maintainable in the absence of employer and employee relationship between the opposite parties and the deceased.

9. Per contra, learned counsel for the applicants submitted that Opposite Party No.2 entrusted the cleaning work to the Opposite Party No.1 under Ex.B1 agreement, therefore, the Opposite Party No.2 is jointly and severally liable to pay compensation along with Opposite Party No.1 to the applicants. He further submitted that at the earliest point of time, the Opposite Party No.1 admitted the relationship of employer and employee between him and the deceased. He further submitted that the learned Commissioner has assigned cogent and valid reasons to his findings. Therefore, the present appeal is not maintainable.

10. The substantial questions of law that arise for consideration in this appeal are:

1. Whether there is a relationship of employer and employee between the Opposite Party No.1 and the deceased as on 11.11.1998?
2. Is there any obligation on the part of the Opposite Party No.2 to pay compensation to the applicants basing on Ex.B1 agreement?

11. The oral testimony of R.Ws.1 and 2 coupled with Ex.B1 clearly reveals that the Opposite Party No.2 entrusted the cleaning and sweeping work of Bus Stand, Warangal to the Opposite Party

No.1 under an agreement dated 27.01.1998(Ex.B1). A perusal of Ex.B1 clearly reveals that Opposite Party No.2 granted licence to Opposite Party No.1 for sweeping and cleaning of the Warangal Bus Stand with effect from 27.01.1998 to 31.01.2000 on a remuneration of Rs.4,300/- per calendar month. As per the testimony of P.Ws.1 and 2, the Opposite Party No.1 engaged the deceased for the purpose of cleaning of Warangal Bus stand. R.Ws.1 and 2 denied the suggestion that the deceased worked under the control of Opposite Party No.1. As per the recitals of Ex.A3 FIR, Ex.A5 charge sheet, the driver of the RTC bus bearing No.10-Z-2517 had driven the same in a rash and negligent manner and dashed the deceased, who was cleaning the bus stand, on 11.11.1998. A perusal of Ex.A4 inquest panchanama, Ex.A6 post-mortem report clearly reveals that the deceased died due to the injuries sustained in the accident occurred on 11.11.1998 at about 1.15 p.m. The oral testimony of P.Ws.1, 2, R.Ws.1 and 2 coupled with Exs.A1 to A6 clearly reveals that the deceased died on 11.11.1998 at about 1.15 p.m. while cleaning the RTC bus stand, Warangal.

12. Prior to filing of the petition, the applicants got issued a legal notice to Opposite Parties No.1 and 2 directing them to pay the compensation for the death of Samuel. Ex.A7 is the legal notice, Exs.A8 and A9 are the postal acknowledgments. It is an undisputed fact that the legal notice got issued by the applicants (Ex.A7) was received by Opposite Parties No.1 and 2. The Opposite Party No.1 got issued a reply notice dated 17.02.1999. For better appreciation of the rival contentions, it is appropriate to extract hereunder the relevant portion:

“The legal notice issued in the name of my client as addressee No.1 is not maintainable in as much as he

is not responsible for the negligence or rash act committed by the driver of APSRTC bus your notice is itself an indication of it. Merely because the labourer was engaged, My client is not responsible for it. She will be entitled to compensation, if any, from the R.T.C. and the R.T.C. should reimburse it.”

13. A perusal of the above clearly indicates that by the time of unfortunate accident, the deceased was working under the control of the Opposite Party No.1. If really the deceased was not engaged by the Opposite Party No.1 for cleaning and sweeping of Bus Stand, Warangal, what made him to give reply by admitting the relationship of employer and employee between him and the deceased. The Opposite Party No.2 officials filed CMP No.1013 of 2005 in CMA No.-----of 2005 with a prayer to condone the delay of 35 days in filing the appeal. Para 2 of the said affidavit reads as under:

“It is submitted that the deceased Akulapalli Samuel was working under R-1 as Cleaner and Sweeper of Local Bus Depot at Warangal on the wages of Rs.900/- per month.”

14. The Opposite Parties No.1 and 2 clearly admitted that by the time of unfortunate incident, the deceased was engaged for the purpose of sweeping and cleaning of Bus Stand, Warangal. The material placed before the learned Commissioner clinchingly establishes the relationship of employer and employee between the Opposite Party No.1 and the deceased and that the deceased Samuel died out of and during the course of his employment. As observed earlier, the Opposite Party No.2 also admitted the relationship of employer and employee between Opposite Party

No.1 and the deceased. In the light of the foregoing discussion, I am unable to accede to the contentions of the learned counsel for the appellant that there was no relationship of employer and employee between the first opposite party and the deceased. The learned Commissioner has assigned cogent and valid reasons to his findings. The findings recorded by the learned Commissioner that there was an employer and employee relationship between first opposite party and the deceased became final in view of non-filing of the appeal or cross-objections by Opposite Party No.1. Point No.1 is answered accordingly.

15. POINT NO.2: As observed earlier, licence was granted to Opposite Party No.1 for cleaning and sweeping of Warangal Bus stand under Ex.B1 agreement. Opposite Parties 1 and 2 in unequivocal terms admitted Ex.B1 was in force as on 11.11.1998. Admittedly, the premises belong to Opposite Party No.2. In fact, Opposite Party No.1 has been carrying the cleaning work on behalf of or as an agent of Opposite Party No.2 by engaging employees of his own choice. A perusal of Sub-Section 2 of Section 12 of W.C. Act at a glance demonstrates that the principal contractor is liable to pay compensation to the injured workman or legal representatives of the deceased workman. In the instant case, Samuel died out of and in course of his employment. The first Opposite Party engaged the services of Samuel for the purpose of cleaning and sweeping of the bus stand, Warangal. Therefore, Opposite Parties 1 and 2 are jointly and severally liable to pay compensation to the applicants. Learned counsel for Opposite Party No.2 in all fairness submitted that Opposite Party No.2 is not disputing the quantum of compensation awarded by the learned Commissioner. A perusal of the record reveals that by the time of death, the deceased was aged about 45 years. Therefore,

the Commissioner has taken the relevant factor as '169.44'. The learned Commissioner has determined the wage of the deceased basing on the orders and notifications issued by the Government from time to time under the Minimum Wages Act. A perusal of the record clearly reveals that the learned Commissioner has meticulously followed the procedure contemplated under the Workmen Compensation Act while awarding the compensation to the applicants. There are no grounds much less valid grounds to interfere with the well considered order of the learned Commissioner. The appeal lacks merit and bonafides and hence the same is liable to be dismissed.

16. Accordingly, C.M.A. is dismissed without costs. Consequently, miscellaneous applications, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date:14.09.2015

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