

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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C.M.A.No.73 of 2008
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JUDGMENT:

This appeal by the appellant/2nd opposite party under Section 30 of the Employees' Compensation Act, 1923 is directed against the order dated 15.11.2007 in W.C.No.69 of 2005 passed by the learned Commissioner for Employees' Compensation and Assistant Commissioner of Labour, Vijayawada.

2. I have heard the submissions of the learned counsel for the appellant/2nd opposite party ('the 2nd opposite party', for brevity) and the learned counsel for the respondents 1 to 5/applicants ('the applicants', for brevity). None appeared for the 6th respondent/first opposite party, though the said respondent was served with notice. I have perused the material record.

3. The basic facts, in brief, are as follows: - 'The applicants, who are the wife and children of the deceased-Nallagatla Ravi @ Adam ('the deceased', for brevity) had filed the compensation case against the opposite parties 1 and 2 claiming compensation under the provisions of the Employees' Compensation Act, 1923 ('the Act', for short) on account of the untimely death of the said deceased due to his involvement in a motor vehicle accident that had occurred out of and during the course of his employment as the driver on the lorry bearing Registration No.AP16T 3857 of the 1st opposite party. The 1st opposite party did not file any counter. The 2nd opposite party having filed a counter had resisted the claim of the applicants. At trial, the 1st applicant and two supporting witnesses were examined as AWs 1 to 3 and exhibits A1 to A6 were marked on the side of the applicants. BW1 was examined and exhibits B1 to B3 were marked on the side of the second opposite party. On merits, the learned Commissioner had awarded a total compensation of

Rs.3,37,703/- besides costs to the applicants recoverable jointly and severally from both the opposite parties and directed them to deposit the same within (30) days from the date of the receipt of a copy of the order.

Aggrieved of the said orders, the 2nd opposite party had preferred this appeal.

4. The learned counsel for the 2nd opposite party would contend that as per the admitted case of the applicants, the cause of death of the deceased was heart-attack and that, therefore, the death of the deceased is not in the course and arising out of the employment; and that heart attack is not an employment injury under the provisions of the Act and that, therefore, the deceased was not under the employment of the 1st opposite party at the time of his death and hence, the applicants are not entitled to claim any compensation from the 2nd opposite party. On the other hand, the learned counsel for the applicants had submitted that the deceased was on duty on 26.11.2004 and that on that day, the deceased had left the house having informed his elder brother that he was going to handover the hire amount to the owner of the vehicle; and that later, he came to know about the death of the deceased near a Mango garden close to Devasamudram Cheruvu, Tiruvuru and that the said brother of the deceased had informed about the same to the police and that the police concerned after investigation had come to the conclusion that the deceased had died on account of heart attack. He would further submit that the deceased who had suffered heart attack while driving the vehicle of the 1st opposite party had stopped the vehicle, got down from the vehicle; and, had died on the road side and that since the deceased had died, the cleaner of the vehicle had left the place with the vehicle to inform the owner.

5. Therefore, the only question which falls for consideration in this appeal is - 'whether the death of the deceased had occurred in an accident arising out and in the course of his employment under the 1st opposite party?'

6. **POINT:** The basic facts are already stated supra, in detail. It is an

admitted fact that the vehicle which was driven by the deceased had not met with any road accident on 26.11.2004. When the 1st applicant was examined as AW1, it was suggested to her that the deceased never worked as a driver under the 1st opposite party. However, she had denied the said suggestion, but had admitted that as per the post mortem report, her husband had died due to Cardio-pulmonary arrest. AW2, the cleaner of the lorry at the relevant time, had deposed about the employment of the deceased on the lorry as a driver and his accompanying the deceased on 26.11.2004. He had also deposed that on that day, the lorry was transporting a load of maize corn and that the deceased died due to heart attack and on account of over strain and stress due to continuous work on the lorry. He had admitted in his cross-examination that he did not give information to the police and that he had left the place with the vehicle to inform the 1st opposite party about the incident. He had denied the suggestion that the deceased might have been killed and was thrown on the road and that there is no nexus between the death of the deceased and his employment on the lorry. He had denied the further suggestion that he was not the cleaner on the lorry. The 1st opposite party who was examined as AW3 had deposed about the employer-employee relationship between him and the deceased and the details of salary and the daily batta that was being paid to the deceased by him and about the employment of AW2 as the cleaner on the lorry. He had further testified that the deceased was on duty on the lorry for the last ten days before his death and that the deceased had died due to heart attack because of stress and strain while he was under his employment as the driver on the lorry and that his lorry was insured with the 2nd opposite party. In his cross-examination, he had admitted that he has not given any letter of appointment to the deceased and that he is not maintaining any registers or records pertaining to the vehicle and that he had not obtained signatures of the deceased while paying salaries to the deceased during his life time and that he has no documentary proof to show that the deceased worked as driver for ten days continuously and that he had not filed the trip sheet of the lorry. Though BW1 was examined, he has no personal knowledge about the matters; but, he had

admitted that the lorry of the 1st opposite party was insured under exhibit B1 with the 2nd opposite party and that exhibit B2 is the 'B' register and exhibit B3 is the final report in the crime. He had asserted that since the crime record shows that the deceased worked under Balusu Kutumba Rao, but not under the 1st opposite party, the Insurance Company is not liable to pay the compensation. During cross-examination, he had admitted that the insurance policy was in the name of the 1st opposite party as on the date of the incident and that the lorry owner is the 1st opposite party and that as per the inquest report, the deceased was the driver of the lorry and that there is no proof with him to show that one Kutumba Rao was the owner. He had denied the suggestion that the deceased died due to stress and strain during the course of his employment. Thus, an analytical reading of the evidence on record would show that the deceased worked as a driver under the 1st opposite party and that his death had occurred due to heart attack, which he had suffered during the course and out of his employment and that the cause of heart attack is stress and strain due to continuous work on the lorry. As a matter of fact, the deceased while driving the lorry had suffered heart attack and had therefore, stopped the lorry by the road side and got down from the lorry and had died on that spot having succumbed to the heart attack.

7. Coming to the legal position, in the decision in **Param Pal Singh v. National Insurance Co. and another**^[1], rendered by a three-Judge Bench of the Supreme Court, the facts show that the deceased, who was a driver felt giddy on reaching Nimiaghat, while driving the vehicle from Delhi to Nimiaghat, and that thereafter, he had collapsed and was found in a fainted condition in the vehicle, which he had managed to park on the road side. In this background, the Supreme Court considered the question as to whether the death of the deceased had occurred out of and in the course of his employment with the 2nd respondent therein. The Supreme Court had referred to the relevant provisions of law and the English law besides the decisions in **Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and another**^[2], **Smt. Sundarbai v. The General Manager,**

Ordinance Factory, Khamaria, Jabalpur^[3], Mallikarjuna G.Hiremath v. Branch Manager, Oriental Insurance Co. Ltd. and another^[4] and also the principles laid down in the decision in **Mackinnon Mackenzie & Co. Ltd. V. Ibrahim Mahmmod Issak^[5]** and had held as follows:

“Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was Casual Connection to the death of the deceased with that of his employment as a truck driver. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependant solely upon his physical and mental resources & endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an ‘untoward mishap’ can therefore be reasonably described as an ‘accident’ as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer’s trade or business.”

8. Coming to the facts of the instant case, having regard to the evidence placed on record, which was discussed supra, and the legal position obtaining, it can validly be concluded that it is sufficiently established that the deceased was actually driving the lorry at the time he had suffered the heart attack and that therefore, he had stopped the lorry and had got down and had later succumbed to the stroke at the spot and that therefore, the cause of death is cardio-pulmonary arrest and that the said cause of death has nexus with his employment and that such an untoward mishap can, therefore, be reasonably attributable to the nature of his employment with his employer, which was in the course of such employer’s business. In such circumstances, the conclusion of the Commissioner of Employees’ Compensation that the death of the deceased was in an accident arising out of and in course of his employment was perfectly justified. The point is accordingly answered.

9. Viewed thus, this court finds that there is no merit in the appeal and accordingly, the appeal is dismissed. No costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

19th June, 2015

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Note: - L.R copy to be marked

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[\[1\]](#) 2013(2) ALD 61 (SC)

[\[2\]](#) AIR 2007 SC 248

[\[3\]](#) 1976 Lab I.C.1163

[\[4\]](#) AIR 2009 SC 2019

[\[5\]](#) 1969 ACJ 422