

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.4684 OF 2004

JUDGMENT:

This appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 (the Act), challenging the order dated 20.7.2004 passed in W.C. Case No.8 of 2004 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Karimnagar.

2. The parties to this appeal will be referred to as they are arrayed before the learned Commissioner, to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows: The first applicant is father and second applicant is mother of Kuncham Anjaiah (hereinafter referred to as, the deceased). The deceased was engaged as a cleaner on lorry bearing No.AP 15T 2959 belongs to opposite party No.1. The deceased died in a motor vehicle accident that occurred on 24.8.2003 out of and in course of his employment. By the time of the accident, the deceased was aged about 19 years and earning Rs.3,500/- per month as lorry cleaner. The lorry bearing No.AP 15T 2959, which belongs to opposite party No.1 was insured with opposite party No.2, with effect from 25.9.2002 to 24.9.2003. Therefore, the application was filed under Section 22 of the Act claiming a compensation of Rs.3,96,165/- against opposite party Nos.1 and 2 jointly and severally.

4. The opposite party No.1 did not file counter. Opposite party No.2 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 there was no employer-employee relationship between opposite party No.1 and the deceased at the relevant point of time. The applicants are not entitled to claim compensation unless they prove that the driver of the lorry was having

valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the applicants is highly excessive and exorbitant. Hence, the application is liable to be dismissed against this opposite party.

5. Basing on the above pleadings, the learned Commissioner has framed four issues. During the course of enquiry, on behalf of the applicants, P.Ws.1 and 2 were examined and Exs.A1 to A4 were marked. On behalf of opposite parties, no oral evidence was let in but Ex.B1 was marked on behalf of opposite party No.2.

6. Basing on the oral, documentary evidence and other material available on record, learned Commissioner arrived at the conclusion that by the time of death, the deceased was working as a cleaner on the lorry bearing No.AP 15T 2959, which belongs to opposite party No.1, and allowed the petition in part by awarding a compensation of Rs.2,51,867/- directing opposite party Nos.1 and 2 to deposit the same with interest at 9% per annum from the date of accident i.e., 24.8.2003 till the date of deposit. Feeling aggrieved by the order of the learned Commissioner, opposite party No.2 preferred the present appeal.

7. The contention of learned counsel for the appellant–opposite party No.2 is two fold:

(1) the application is not maintainable under Section 22 of the W.C. Act as there was no relationship of employer and employee between opposite party No.1 and the deceased as on 24.8.2003; and

(2) learned Commissioner committed error while awarding interest at 9% per annum from the date of the accident till the date of deposit.

8. ***Per contra***, learned counsel for the applicants submitted that the oral and documentary evidence produced before the lower authority clinchingly establishes employer-employee relationship between opposite party No.1 and the deceased; therefore, the present appeal is not maintainable under law. He further submitted that learned Commissioner rightly granted interest at 9% per annum from the date

of the accident till the date of deposit.

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

(1) Whether there exists employer-employee relationship between opposite party No.1 and the deceased as on 24.8.2003?

(2) Whether the learned Commissioner committed error while awarding interest at 9% per annum from the date of the accident till the date of deposit?

Question No.1:

10. To substantiate the case, applicant No.1 examined himself as P.W.1 and got marked Exs.A1 to A4. As per the testimony of P.W.1, opposite party No.1 engaged his son (the deceased) as cleaner on the lorry bearing No.AP 15T 2959. His testimony further reveals that at the time of the accident, his son was travelling in the lorry as a cleaner. As per the testimony of P.W.2, the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 15T 2959. As per the recitals of Ex.A1 F.I.R., and Ex.A3 charge sheet, by the time of the accident, the deceased was travelling in the lorry bearing No.AP 15T 2959 as a cleaner. As per Ex.A2 Inquest Report and Ex.A4 Post Mortem Examination Report, the deceased died of the injuries sustained in the accident. In the cross-examination of P.Ws.1 and 2, nothing is elicited to shake their testimony so far as the manner of the accident and the factum of sustaining injuries by the deceased in a motor vehicle accident that occurred on 24.8.2003 are concerned. If really the deceased was not working as a cleaner on the lorry bearing No.AP 15T 2959, there is no necessity for P.W.2 to mention the avocation of the deceased as claimed in Ex.A1 F.I.R. The opposite party No.2 has not adduced oral or documentary evidence to substantiate its stand that there was no relationship of employer and employee between opposite party No.1 and the deceased. The oral testimony of P.Ws.1 and 2 coupled with Exs.A1 to A4 clearly establishes employer and employee relationship between opposite party No.1 and the deceased as on 24.8.2003. The oral and

documentary evidence placed before the learned Commissioner clearly established that the deceased died out of and in the course of his employment. The learned Commissioner has assigned cogent and valid reasons to its findings. There are no grounds much less valid grounds to interfere with the findings recorded by the learned Commissioner on this aspect.

11. In the light of the foregoing discussion, I have no hesitation to hold that the deceased died out of and in course of his employment. Hence, this question is answered in favour of the applicants and against opposite party No.2.

Question No.2:

12. The learned Commissioner, taking into consideration the age of the deceased, adopted the factor 226.38. Except the oral testimony of P.W.2, there is no other convincing evidence to establish that by the time of his death, the deceased was earning Rs.3,500/- per month. In the absence of documentary evidence, there is no other go except to place reliance on the notifications and orders issued by the Government in order to determine the wage of the deceased. The learned Commissioner has taken the wage of the deceased as Rs.1,437/- per month basing on G.O.Ms. No.30, L.E.T & P (Labour-II) Department, dated 27.7.2000. By following the procedure contemplated under the W.C. Act, learned Commissioner awarded the compensation of Rs.2,51,867/- to the applicants. The learned Commissioner awarded interest at 9% per annum from the date of the accident till the date of deposit by placing reliance on the decision

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13. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am unable to accede to the contention of the learned counsel for opposite party No.2 that the learned Commissioner has committed error while awarding interest at 9% per annum from the date of the accident. There are no

grounds much less valid grounds to interfere with the well considered order passed by the learned Commissioner. The appeal lacks merits and bona fides. Accordingly, this question is answered against the opposite party No.2 and in favour of the applicants.

14. In the result, the 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: 28.9.2015.

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[\[1\]](#) 2003 (1) ALD 594