

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

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**C.M.A.No.381 of 2008**  
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**JUDGMENT:**

The unsuccessful second opposite party/insurer filed this appeal under Section 30 of the Workmen's Compensation Act, 1923 presently known as Employees' Compensation Act ('the Act' for short) assailing the order dated 02.09.2006 in WC 21 of 2004 of the learned Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour-I, Guntur.

2. I have heard the submissions of the learned counsel for the appellant/second opposite party ('the second opposite party', for brevity) and the learned counsel for the respondents 1 to 5/applicants ('the applicants', for brevity). No submissions are made for the 6<sup>th</sup> respondent/first opposite party.

I have perused the material record.

3. The learned counsel for the second opposite party would contend as follows: 'The learned Commissioner had erred in awarding compensation and fastening the liability on the second opposite party in spite of the fact that there is clear evidence from the side of the applicants that there were disputes between the deceased and the owner of the vehicle and that there was also a complaint to the police by the father of the deceased that the owner of the vehicle and drivers of the lorry might have murdered his son i.e., the deceased. The learned Commissioner had grossly erred in not looking into the contents of exhibit A1-FIR and other crime records including exhibit A7-the copy of the case diary (final report) and had erroneously concluded that the evidence on record proved beyond reasonable doubt not only the employment of the deceased as driver but also that the death of the deceased had occurred out of and in the course of his employment on account of cardio respiratory failure. The learned Commissioner ought to have seen that the case pleaded in the claim petition of the applicants is quite contrary to the averments in the record of the crime and that there is no evidence adduced to

establish that the deceased worked as a driver under the first opposite party and that there is employee and employer relationship between the deceased and the first opposite party and that the deceased was employed as a driver on the crime lorry and that his death had occasioned in an accident that had occurred out of and during the course of his employment as driver on the lorry of the first opposite party. The learned Commissioner had erred in holding that the deceased was a driver, when the complaint of the father of the deceased lodged with the police would show that the deceased was only a cleaner. The Commissioner ought to have seen that there is any amount of suspicion as regards the cause of death and that the applicants had failed to establish any nexus between the cause of death and the employment. The learned Commissioner ought to have seen that the deceased was not a workman within the meaning of the provisions of the Act. The learned Commissioner was not correct in holding that the deceased was performing his duties as a driver at the time of his death. The order is unsound and not based on facts pleaded and established.'

4. On the other hand, the learned counsel for the applicants while supporting the impugned order had placed reliance on exhibit A3-the post mortem report wherein the cause of death was mentioned as 'cardio respiratory failure' and had further contended as under: 'The father of the deceased by mistake might have mentioned in the complaint to the police that the deceased worked as a cleaner. The driving licence of the deceased was also exhibited; and, it establishes that the deceased was a driver. The evidence brought on record was rightly appreciated by the learned Commissioner before holding that there is employee and employer relationship between the deceased and the 1<sup>st</sup> opposite party and that the death of the deceased had occasioned out of and during the course of his employment under the first opposite party as a driver on the lorry bearing No. AP 7X 1159. The well reasoned order does not call for any interference. Considering the beneficial object of the Act, the order may be confirmed.

5. Now the points for determination are:

1. **Whether the applicants had sufficiently established that the deceased was a driver on the vehicle bearing registration no. AP 7X 1159 of the first opposite party? And, if so, whether it was further established that the deceased was involved in an incident/accident and had died out of and during the course of his employment as a driver on the said lorry of the first opposite party?**
2. **Whether the order impugned awarding compensation to the applicants is unsustainable under facts and in law and in the circumstances urged by the second opposite party?**

**6. POINTS:**

**6.1** The averments in the application, in brief, are as follows: 'The deceased worked as a driver on the lorry bearing registration no. AP 7X 1159 of the first opposite party, which was insured with the second opposite party. While the deceased was discharging his duties as the driver on the said lorry of the first opposite party, he had received personal injuries in an accident arising out of and in the course of his employment and had died on 16.04.2003 due to cardio respiratory failure. He was aged 33 years and was earning a wage of Rs.3,000/- per month at the time of the accident. The Station House Officer, Ponnur Police Station has registered a case in Crime No.26 of 2003. The applicants are the wife, the children and the mother of the deceased and the opposite parties are jointly and severally liable to pay the compensation of Rs.3 lakhs along with interest to the applicants.'

**6.2** The first opposite party filed a counter before the learned Commissioner admitting the employment of the deceased under him and also the death of the deceased out of and during the course of his employment and had *inter alia* contended that his lorry was insured with the second opposite party at the relevant time and that, therefore, the claim petition against him is liable to be dismissed.

**6.3** The second opposite party filed a counter strongly resisting the claim of the applicants and denying in toto the case of the applicants.

**6.4** During the course of the enquiry, the first applicant was examined as AW1 and exhibits A1 to A10 were marked. No oral and documentary evidence was adduced on the side of the opposite parties. On merits, the learned Commissioner had awarded a compensation of Rs.3,67,153/- with interest and directed both the opposite parties to deposit the same before the Deputy Commissioner of Labour by means of a demand draft within thirty days from the date of receipt of a copy of his order. Aggrieved of the said orders, the second opposite party had preferred this appeal.

**6.5** The case of the applicants is already stated supra. The first applicant who is examined as AW1 had reiterated the case pleaded in the claim petition and had stated that her husband died due to heart attack, which he had suffered, out of and during the course of his employment and that he was not killed by the first opposite party and another driver and that, therefore, the police dropped criminal proceedings against the owner of the lorry and that the second opposite party is also liable to pay the compensation as the lorry was insured with it. In her evidence, the following documents were marked. Exhibit A1 is the copy of the FIR in Crime No.26 of 2003 of Ponnur Town Police Station. Exhibit A2 is the copy of the inquest report dated 17.04.2003 prepared by the Mandal Revenue Officer, Ponnur. Exhibit A3 is the copy of the post mortem certificate of the deceased. Exhibit A4 is the copy of the opinion dated 01.05.2003 of the expert. Exhibit A5 is the copy of the report/opinion furnished by scientific officer of State Forensic Science Laboratory. Exhibit A6 is the copy of the post mortem certificate with final report as to cause of death. Exhibit A7 is the copy of the case diary in the aforementioned crime containing the final report dated 30.09.2003. Exhibit A8 is the copy of the driving licence of the deceased. Exhibit A9 is the transfer certificate of the deceased and exhibit A10 is the copy of the insurance policy. I have gone through the contents of the exhibits A1 to A8, the copies of which are produced by the learned counsel for the second opposite party. During the cross examination done for the second opposite party, she (AW1) had admitted that her claim is based on the documentary evidence and available records and that the owner of the lorry and a co-driver

brought the dead body of her husband to her house and that she did not enquire about the cause of death of her husband and that police did not examine her. She had denied the suggestions that the first opposite party is alone liable to pay the compensation and that the second opposite party is not liable and that the first opposite party and another driver had colluded with her and that in collusion with them she had filed this case to get compensation illegally from the second opposite party. The first opposite party had contended before the learned commissioner that though it was mentioned in some of the records that the deceased was a cleaner, the deceased had actually worked as a driver and that the age of the deceased was 34 or 35 years.

**6.6** In the light of the facts and the evidence and the grim contest of the second opposite party that the deceased did not die in any accident and that his death had not occurred out of and during the course of his employment and in the light of the fact that the initial onus of proof and the legal burden are on the applicants, it is necessary now to refer to the contents of the crime records and other records which are exhibited.

**6.7** The contents of the copy of the first information dated 16.04.2003 lodged by the father of the deceased with the Station House Officer, Ponnur Police Station, which is forming part of exhibit A1 copy of FIR, are to the following effect: 'The deceased worked since 5 or 6 months prior to that date as a cleaner on a lorry of one Babavali. On 23.03.2003 at about 03:00 PM., while leaving the house to attend his duty, the deceased had stated to him (the informant) that there are differences between his owner and the drivers and that it is his last duty day and that he would inform the further details on his return. Later, on 13.04.2003 Sunday at about 05:00 PM., the deceased spoke to him (the informant) on phone. On 15.04.2003 night at about 11:00 PM., the lorry owner Babavali @ Maddirala Sithayya came to the house and informed Srinivasa Rao-the second son of the informant that the condition of his younger brother Subramanyam (the deceased) was serious and had hurriedly left the place. On 16.04.2003 at about 06:00 PM., one Kondalrao and another Srinu having brought the dead body of the deceased in a lorry

bearing no. AP 7X 1159 went away stating that they would come again. In the circumstances he suspects that the owner Babavali and drivers had murdered his son (the deceased). ....’

**6.8** Thus, the contents of this document, which are contrary to the testimony of AW1 and also the case pleaded by the applicants in the claim petition, would lay bare that the father of the deceased in the circumstances stated by him in his first information lodged with the police had suspected that the owner Babavali and the drivers had murdered his son, the deceased. The contents of the inquest report also would show that inquest was held on the dead body of the deceased which was available in the lorry bearing registration no. AP 7X 1159. Even the inquest panchas had opined that the deceased might have been killed by strangulation of his neck and private parts. As already noted, the copy of the post mortem certificate on a perusal would show that the doctor who had conducted the post mortem examination on 17.04.2003 had opined that the deceased would appear to have died about 36 to 48 hours prior to the post mortem examination and that the cause of death is ‘cardio respiratory failure’. A perusal of the details of the external appearance of the dead body as noted in the post mortem report would disclose the following facts: ‘The trunk of the body was swollen (turgidity); swelling of the neck present; no free movement in between the neck and the trunk; swelling of scrotum, both palms and hands present; the entire face is swollen; further, the body is in a state of putrefication.’ The part-II case dairy-exhibit A7 discloses that a final report dropping action was submitted to the Court concerned after investigation. The contents of the final report also refer to the first information. In the said report, it was stated that the first informant, who is no other than the father of the deceased, had suspected that the lorry owner-Babavali and the drivers of the crime vehicle might have murdered the deceased by pressing the neck and squeezing the testicles of the deceased; and that basing on that first information, the crime was registered. In the final report it was also stated that LWs1 to 9 were examined and that their statements were recorded in detail and that inquest was held on the dead body of the deceased and that subsequently post mortem examination was

conducted and that the doctor had opined that the cause of death is 'cardio respiratory failure' and that after obtaining instructions from the superiors of the investigating officer the case was referred as 'action dropped' and that accordingly the final report was submitted to the Court to treat the case as such and issue necessary proceedings. In the light of the contents of all these documents, there is any amount of suspicion as to the truthful nature of the version of the applicants in this case. The father of the deceased had stated in the first information that his son was a cleaner and that he suspects that his son was murdered by the owner Babavali and the drivers. The inquest panchas also opined that the death was due to squeezing of the neck and scrotum. In the crime records the name of the owner of the lorry was mentioned as Babavali whereas in the claim application the owner of the lorry was stated to be the first opposite party by name Sk.Abdul Rawoof. According to the first information lodged by the father of the deceased, there was first a communication to his second son Srinivasa Rao that the condition of the deceased-Subramanyam was serious; and, later the dead body of the deceased was brought by two persons in a lorry to the residence. Thus, there is absolutely no evidence as to where and when the deceased had died and what was he doing at the time of his death. Even the father of the deceased, who is the first informant, was not examined to explain the circumstances in which his son, the deceased, had died. Except AW1 no other witness was examined. When the contents of the documentary evidence are not supporting the case of the applicants on any aspect, on a mere oral assertion of AW1, no finding can be recorded in favour of the applicants as neither the cause of death nor an incident or accident resulting in the death of the deceased out of and in the course of employment are not established. Therefore, there is no possibility to record a finding that the deceased worked as a driver under the first opposite party and that his death had occasioned in any accident/incident having nexus with his employment as driver on the lorry bearing No. AP 7X 1159 as alleged by the applicants. There is also no material to show that the cause of death namely, 'cardio respiratory failure' was on account of any stress and strain due to continuous work and discharge of duties in the regular course of his employment as a driver on the

lorry of the first opposite party. In the facts and circumstances of the case and in view of the findings recorded supra, no liability can be fastened even against the first opposite party, the alleged owner of the lorry, as the name of the owner of the vehicle mentioned in the first information is different from the name of the first opposite party, as already noted. Even though the legislation is a beneficial legislation and is made with an avowed objective to benefit the injured employees and the legal heirs of the deceased employees, merely taking into consideration the object of legislation no compensation can be awarded in the absence of the applicants establishing even a semblance of case showing their entitlement to the relief.

**6.9** On a careful analysis of the facts and the contents of the documentary evidence, this Court is of the well considered view that the findings of the learned Commissioner that the deceased was the driver and that the applicants proved beyond reasonable doubt his employment as a driver on the crime lorry and that the deceased is a workman within the meaning of the provisions of the Act and that he had died out of and during the course of his employment under the first opposite party cannot be sustained being not based on any material evidence on record, which is worth placing reliance. Therefore, this Court finds that there is acceptable merit in the contentions of the second opposite party. For all the aforementioned reasons the appeal deserves to be allowed and the impugned order is liable to be set aside. The points are answered accordingly against the applicants and in favour of the appellant/2<sup>nd</sup> opposite party.

**7.** In the result, the appeal is allowed and the impugned order is set aside. There shall be no order as to costs.

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

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**M. SEETHARAMA MURTI, J**

1<sup>st</sup> July, 2015  
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