

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
C.M.A.No.829 of 2005

JUDGMENT:

1 This appeal is filed under Section 30 of Workmen's Compensation Act, 1923 challenging the order dated 16.09.2004 passed in W.C.No.14 of 2001 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ranga Reddy Circle – II, whereunder and whereby the Commissioner granted compensation of Rs.1,70,199/- as against the claim of Rs.5.00 lakhs claimed by the applicants.

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

3 The facts, which are relevant, for disposal of the present appeal are as follows:

4 One Bavaji Mallaiah was engaged as labour on the borewell rig vehicle bearing No.AAM 2021 which belongs to the Opposite Party No.1. On 06.02.2001, while attending the drilling work, Mallaiah died on the spot due to coming into contact with live electric wire. In connection with the said accident, the Station House Officer Amangal Police Station registered a case in Cr.No.9 of 2000 under Section 174 Cr.P.C. By the time of his death, Mallaiah (hereinafter referred to as 'the deceased') was aged about 24 years and used to earn Rs.3,500/- p.m. First applicant is father and second applicant is mother of the deceased and they are dependants on the income of the deceased. The borewell rig bearing No.AAM 2021 which belongs to the Opposite Party No.1 was insured with the Opposite Party No.2 as on the date of accident. Therefore, Opposite Party Nos.1 and 2 are jointly and

severally liable to pay compensation to the applicants. Initially the claim petition was filed by applicant Nos.1 and 2 and subsequently applicant Nos.3 and 4 were added.

5 Opposite Party No.1 remained *ex parte*. Opposite Party No.2 opposed the claim by filing counter denying all the material averments made in the claim petition including the age and income of the deceased. There is no employer and employee relationship between the deceased and the Opposite Party No.1, hence the petition may be dismissed. The amount of compensation claimed is highly excessive and exorbitant.

6 Basing on the rival contentions, the Commissioner framed the following issues.

- i. Whether the deceased died in the accident?
- ii. Whether the deceased employed as borewell worker under O.P.1 and died during the course of his employment and worker within the meaning of the Act?
- iii. If yes, to what compensation the applicants are entitled?
- iv. Who are the dependents and legal heirs to receive the compensation amount?

7 During the course of enquiry, on behalf of the applicants P.Ws.1 and 2 were examined and Exs.A.1 to A.6 were marked. On behalf of the Opposite Parties, though no oral evidence was let in, copy of the insurance policy was marked as Ex.B.1 on behalf of Opposite Party No.2.

8 On appreciating the oral and documentary evidence available on record, the learned Commissioner arrived at a conclusion that the deceased died out of and during the course of employment under the Opposite Party NO.1 and allowed the petition in part by awarding an amount of Rs.1,70,199/- as

compensation to the applicants.

9 As stated supra, feeling aggrieved by the order of the learned Commissioner, the Opposite Party No.2 filed the present appeal.

10 The contention of the learned counsel for the Opposite Party No.2 is three fold. 1) The incident occurred due to the gross negligence on the part of the deceased himself and hence the petition is not maintainable. 2) There is no employer and employee relationship between the Opposite Party No.1 and the deceased. 3) The amount of compensation awarded by the learned Commissioner is on higher side.

11 *Per contra*, the learned counsel for the applicants submitted that the recitals of Ex.A.1 to A.4 clinchingly establish that the deceased died out of and during the course of employment. He further submitted that the recitals of Ex.A.1 clearly establish the relationship of employer and employee between the Opposite Party No.1 and the deceased. He further submitted that there are no grounds much less valid grounds to interfere with the findings recorded by the learned Commissioner.

12 Basing on the above rival contentions, the substantial question of law that arises for consideration in this appeal is

“Whether the learned Commissioner is justified in fastening liability on the Opposite Party NO.2 in the absence of relationship of employer and employee between the Opposite Party No.1 and the deceased?”

13 As seen from the testimony of P.Ws.1 and 2, on the date of the unfortunate incident, Opposite Party No.1 engaged the deceased to attend the work on his borewell rig bearing No.AAM 2021 for the purpose of digging a borewell. Their testimony further

reveals that the deceased while attending the borewell work died due to coming into contact with live electric wire. In the cross examination of these two witnesses, nothing is elicited to shake their testimony so far as the factum of death of the deceased is concerned.

14 As per the recitals of Ex.A.1 – FIR, the deceased was attending the work of Opposite Party No.1 at the time of unfortunate incident. As per the recitals of Ex.A.2 – PM report, the deceased died due to electric shock. As per the recitals of Ex.A.4 – panchanama, the incident occurred in the fields of Opposite Party NO.1. The oral testimony of P.Ws.1 and 2 is fully supported by the recitals of Ex.A.1 to A.4. The oral and documentary evidence available on record clinchingly establish that by the time of the unfortunate incident, the deceased was working as an employee of the Opposite Party No.1. From the material available on record, it is manifest that the deceased died out of and during the course of employment under Opposite Party No.1. By examining P.Ws.1 and 2 and by marking Exs.A.1 to A.4, the applicants have clinchingly established the relationship of employer and employee between the Opposite Party No.1 and the deceased. The learned Commissioner has considered the oral and documentary evidence in right perspective and arrived at a conclusion that the applicants have established the relationship of employer and employee between the Opposite Party No.1 and the deceased. There are no grounds much less valid grounds to upset the finding recorded by the learned Commissioner. I am in full agreement with the findings recorded by the learned Commissioner. In the light of the foregoing discussion, I am unable to accede to the contention of the learned counsel for the Opposite Party No.2 that there is no

relationship of employer and employee between the Opposite Party No.1 and the deceased and hence the petition is not maintainable under the provisions of the W.C. Act.

15 As per the recitals of Ex.A.2 the deceased was aged about 24 years by the date of accident. Therefore, the learned Commissioner has taken the appropriate factor as 218.47. Except the self-serving testimony of P.Ws.1 and 2, there is no other cogent and convincing evidence to prove the income of the deceased. It is not uncommon to exaggerate the income of the deceased so as to claim more compensation. In the absence of documentary evidence, there is no other option to the learned Commissioner except to place reliance on the Government Orders issued from time to time under the Minimum Wages Act. The learned Commissioner determined the income of the deceased as Rs.1,555/- p.m. taking into consideration the G.O.Ms.No.71, dated 12.07.1991 and calculate the compensation. By following the procedure contemplated under the W.C. Act, the learned Commissioner awarded an amount of Rs.1,69,860/- towards compensation and an amount of Rs.339/- towards stamp duty. Thus the total amount of compensation to which the learned Commissioner arrived is Rs.1,70,199/-.

16 Viewed from any angle, the amount of compensation awarded by the learned Commissioner is just and reasonable. There is no illegality or irregularity in the order passed by the learned Commissioner warranting interference of this Court. The appeal lacks merits and bonafides.

17 In the result, the appeal is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in

this miscellaneous appeal, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 7th September, 2015

Kvsn