

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.1124 of 2005

JUDGMENT:

This civil miscellaneous appeal is filed under Section 30 of the Workmen's Compensation Act, challenging the order dated 23.08.2005, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1 Circle, Guntur, (for short, the Commissioner) in W.C. Case No.33 of 2003, wherein and whereby the application of the applicants for Rs.3,50,000/- for the death of Kurra Ranga Naik @ Venkatarao, was dismissed.

2. The parties will be hereinafter referred to as they are arrayed before the Commissioner in W.C. Case, for the sake of convenience.

3. The facts leading to filing of the present appeal are briefly as follows: Kurra Ranga Naik @ Venkatarao, while driving the lorry bearing No.AP 7X 1619, which belongs to the opposite party No.1 and insured with opposite party No.2, went to Bombay for unloading of rice in the second week of August 2002. Kurra Ranga Naik @ Venkatarao (herein after referred to as 'the deceased') died at Bombay due to heart attack during the course of his employment. Post-mortem examination was conducted over the dead body of the deceased in NMMC General Hospital, Bombay. By the time of the death, the deceased was aged about 30 years and used to earn Rs.4,100/- per month. Applicant No.1 is the wife, Applicants 2 and 3 are the minor children and Applicant No.4 is the mother of the deceased. Hence, the petition claiming compensation of Rs.3,50,000/- from the Opposite Party Nos.1 and 2 jointly and severally.

4. The first respondent remained exparte. The second respondent filed counter denying all the averments made in the petition including the manner of the death, age and income of the deceased. It is further contended that the deceased was not an employee of the opposite party No.1. The deceased will not fall within the ambit of workmen as defined under the Workmen's Compensation Act. The lorry bearing No.AP 7X 1619 was not insured with it as on the date of alleged incident. The amount of compensation claimed by the applicants is on higher side. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Commissioner framed the following issues:

(1) Whether the deceased was a workman as per the provisions of the Act and he died due to personal injuries he received in an accident arising out of and in the course of his employment?

(2) Amount of compensation payable? and

(3) Who are liable to pay the compensation?

6. During the course of enquiry, on behalf of the applicants, A.Ws.1 and 2 were examined and Exs.A1 to A8 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

7. Basing on the oral, documentary evidence and other material available on record, the learned Commissioner arrived at a conclusion that the applicants failed to establish that the deceased was an employee of opposite party No.1 as on the date of death, i.e. on 15.08.2002 and dismissed the application. Feeling aggrieved by the orders of the learned Commissioner, the applicants have preferred the present appeal.

8. The contention of the learned counsel for the appellants—applicants is two fold:

(1) the learned Commissioner has not given due weight to Ex.A2 Post-mortem certificate, which clinchingly establishes that the deceased died during the course of employment;

(2) the learned Commissioner has not appreciated the oral testimony of A.Ws.1 and 2 in the light of recitals of Ex.A2 post-mortem certificate; and

(3) the order of the Commissioner is based on assumptions and presumptions.

Per contra, learned counsel for the second respondent submitted that the applicants failed to establish the fact that by the time of death, the deceased was working as a driver under the control of opposite party No.1. He further submitted that there are no grounds much less valid grounds to interfere with the order of the learned Commissioner.

9. Now the points that arise for consideration in this appeal are:

1. Whether the Applicants have established the relationship of employee and employer between the deceased and the Opposite party No.1?

2. Whether the learned Commissioner is justified in dismissing petition?

Point Nos.1 and 2 are interlinked with each other and hence I am inclined to address both points simultaneously to avoid repetition.

Point Nos.1 and 2:

10. As per the recitals of Ex.A2 post-mortem certificate, the deceased died due to heart attack. The fact remains autopsy was conducted over the dead body of the deceased in NMMC General Hospital, Bombay on 15.08.2002. If really the deceased was working as a driver on the lorry bearing No.AP 7X 1619 as on the date of his death, what prevented the opposite party No.1 to file counter before the learned Commissioner admitting the relationship of employer and employee between him and the deceased. For the reasons best known, the first respondent did not choose to file counter before the Commissioner either admitting or denying the relationship of employer and employee between him and the deceased. The opposite party No.1 entered into the witness box and examined himself as A.W.2 in order to support the version of the applicants. There is no legal impediment to allow the petitions filed under Workmen's Compensation Act even in the absence of documentary evidence, basing on the oral testimony of the witnesses, provided, the same is a coherent, cogent, convincing and consistent. It is needless to say that the court can place reliance on the oral testimony of witnesses, if the same inspires the confidence of the Court. In the cross-examination, AW2 in unequivocal terms deposed that he is not having any registration certificate of the lorry in order to prove his ownership under the Motor Vehicles Act. He further deposed that he is not having trip sheet of the lorry bearing No.AP 7X 1619. Except the inconsistent oral testimony of A.W.2 there is no other convincing evidence to establish that

the deceased went to Bombay while driving the lorry during the course of his employment. Absolutely there is no material on record to establish that as on the date of death, the deceased was working as a driver of the lorry bearing No.AP 7X 1619, which belongs to the first respondent/opposite party No.1. Establishing the factum of employer and employee relationship is *sina-qua-non* for awarding compensation under the Workmen's Compensation Act. As rightly pointed out by the learned counsel for the applicants, the Workmen's Compensation Act is a piece of beneficial legislation. The court has to interpret the provisions of Workmen's Compensation Act liberally so as to protect the legitimate rights of workmen or his legal representatives. However, that does not mean that the Commissioner of Workmen has to allow the petition without scrutinizing the oral and documentary evidence available on record. Non-filing of counter by the first respondent before the Commissioner creates any amount of doubt. I have carefully scanned the cross-examination of A.W.2. Keeping in mind the object of Workmen's Compensation Act as well as the provisions of the Indian Evidence Act, the possibility of deposing false by A.W.2 in order to help the applicants cannot be ruled out completely. The testimony of A.W.2 is no way helpful to the applicants to establish that by the time of his death, the deceased was working as driver on the lorry bearing No.AP 7X 1619. In post-mortem report also, it is not mentioned that the deceased died due to heart-attack while driving the lorry bearing No.AP 7X 1619 or taking rest in the said lorry. Ex.A5 legal notice was issued on 04.03.2003 claiming compensation from the opposite parties 1 and 2. Inaction on the part of the applicants for a period of seven months is not properly explained. If really the deceased worked as a driver on the lorry bearing No.AP 7X 1619, what prevented the Opposite Party No.1 to issue a reply either by admitting or denying the recitals of the notice. This aspect also cracks foundation of the applicants to claim compensation by invoking the provisions of Act.

11. The learned Commissioner has considered all aspects in right perspective and dismissed the petition. I am fully agreeing with the findings recorded by the learned Commissioner. There are no grounds, much less valid grounds to interfere with the orders passed by the learned Commissioner so far as the relationship of employer and employee is concerned. Hence the present appeal

is lack of merits and the same is liable to be dismissed.

12. In the result, the appeal is dismissed without costs. Miscellaneous applications, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date:15.7.2015

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