

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.3981 of 2003

JUDGMENT:

This appeal is preferred against the orders of the Assistant Commissioner of Labour, Nizamabad in W.C.No.80 of 1998, dated 17.05.2003, whereunder the Commissioner for Workmen's Compensation, who is the Assistant Commissioner of Labour, Nizamabad, granted a sum of Rs.2,19,950/- as against the claim of Rs.4,00,000/-

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2. Brief facts leading to this appeal are as follows:

Respondents No.1 to 3 herein submitted an application under Section 22 of the Workmen Compensation Act, 1923, to the Commissioner for Workmen's Compensation, claiming compensation of Rs.4,00,000/- for the death of deceased Asubagandla Nadipi Gangadhar, contending that he died during the course of employment under 4th respondent herein and the vehicle is insured with appellant. The Assistant Commissioner of Labour, Nizamabad, after recording evidence of two witnesses on claimant's side and one witness on behalf of Insurance Company by marking four documents on behalf of claimants and five documents on behalf of Insurance Company, awarded Rs.2,19,950/- as compensation. Aggrieved by the same, Insurance Company preferred the present appeal.

3. Heard both sides.

4. Advocate for Insurance Company mainly contended that the Assistant Commissioner of Labour is not right in holding that there is employee and employer relationship between deceased and 4th respondent herein without looking into salary proof and other particulars. He submitted that 4th respondent herein is no other than the own brother of the deceased and according to letter issued by Vijaya Bank, which is marked as Ex.B.2, deceased is also one of the borrower. He further submitted as per F.I.R. which is given by the father of deceased, the deceased has to be treated as one of the owner of the vehicle and, therefore, the compensation granted to the claimants treating the employee and employer relationship between deceased and 4th respondent is not correct and the order of the Assistant Commissioner of Labour is liable to be set aside. He also submitted that letter issued by Sarpanch further supports the contention of Insurance Company that there is no relationship of employee and employer between deceased and 4th respondent.

5. On the other hand, learned Advocate for claimants submitted that there is no bar or prohibition to employ own brother as driver and when the evidence on record would clinchingly show that the deceased drove the vehicle as a driver working under 4th respondent on the date of

accident, there is no rebuttal evidence on behalf of Insurance Company and the Assistant Commissioner of Labour rightly granted compensation and the fact recorded by the Assistant Commissioner of Labour cannot be disturbed. He further submitted that there is no evidence on record to come to a different conclusion with regard to relationship of employee and employer between deceased and 4th respondent herein. He further submitted that claimants have already withdrawn 50% of the amount as per the orders of this Court and that there are no grounds to interfere with the findings of the Assistant Commissioner of Labour, Nizamabad.

6. Now the point that would arise for my consideration in this appeal is:

Whether the order in W.C.No.80 of 1998, dated 17.05.2003, of the Commissioner for the Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, is legal, proper and correct?

POINT :

7. There is no dispute with regard to accident, dated 10.01.1998, in which the deceased died. There is also no dispute that tractor was insured with appellant and that the policy is in force as on the date of accident. The only objection of the Insurance Company is that claimants failed to show that there is relationship of employee and employer between deceased and 4th respondent, therefore, compensation granted by the Assistant

Commissioner of Labour invoking the provisions of Workmen Compensation Act cannot be sustained. Admittedly deceased was own brother of 4th respondent herein, who is figured as owner of crime vehicle i.e., tractor bearing No.AP 25 D 7202. On behalf of Insurance company, one of its employee is examined as RW.1 and through him letter issued by Vijaya Bank, dated 24.08.1999 is marked as Ex.B.1. According to this letter, loan was contacted by three persons for purchase of tractor and the deceased is one among them. Now referring to this letter, Advocate for Insurance Company contended that deceased cannot be termed as employee and he also took loan for purchase of the tractor. Admittedly, father of deceased lodged F.I.R. with the police, which is marked as Ex.A.1. In the F.I.R. there is no reference as to the status of deceased. It is mentioned in F.I.R. that on the date of accident deceased was driving their own tractor. No doubt, there is no prohibition for employing own kith and kin, but, when kith and kin are claimed as employee, burden is heavy on claimants to prove the relationship of employee and employer. If the employee is a third party, mere statement or counter of the employer admitting the relationship can be accepted as prima facie material showing relationship of employee and employer. But, in case, when employment was given to own kith and kin, the counter or statement of the employer would be termed as interested testimony, therefore, strong

proof is required to establish the relationship of employee and employer. Admittedly, claimants have not produced any evidence except relying on their self serving testimony to show that deceased was employed as driver by 4th respondent herein on the tractor belonging to him. Even in the F.I.R., panchanama and other documents relied on by petitioners, the deceased was not referred as employee of 4th respondent. Learned Advocate for Insurance Company has drawn my attention to a decision of Hon'ble Supreme Court in **Gottumukkala Appala Narasimha Raju and others v. National Insurance Company Limited and another**^[1], wherein it is held that *“before the Commissioner under Workmen Compensation Act, defence taken by insurer that deceased and owner of tractor being husband and wife, relationship of employer and employee between them did not arise and hence deceased was not a ‘workman’ within the meaning of Section 2(1)(n) of the Workmen Compensation Act. Despite non-production of any documentary proof to establish contract of employment between wife and husband, award passed against insurer and held, in the circumstances of the case, the question of husband being a ‘workman’ under his wife appeared to be a far-fetched one”* and holding so compensation granted by Commissioner for Workmen which was set aside by the High Court was upheld. It is clear from the above

decision, when close relatives claimed relationship of employee and employer strict proof is required to show that kind of relationship. Here, admittedly no material is produced before the lower authority to show that deceased was employed as a driver under 4th respondent. On the other hand, the evidence on record would disclose that deceased has also borrowed amount from the Bank for purchase of the very same tractor, which stands in the name of 4th respondent. So considering the principle laid down by the Hon'ble Supreme Court in the above referred decision, I have no hesitation in holding that claimants failed to establish contract of employment between brothers i.e., 4th respondent and deceased and without such proof, the Commissioner for Workmen Compensation proceeded and awarded compensation, which in my view is incorrect. As already observed above, when close relatives claim contract of employment, strict proof is required and such relationship cannot be accepted without cogent and convincing evidence. If it is between third parties such strict proof may not be required. Therefore, for these reasons, I am of the view that the Assistant Commissioner of Labour erred in holding that there is relationship of employee and employer between deceased and 4th respondent herein and the said finding has to be set aside.

8. Accordingly, the appeal is allowed and impugned order, dated 17.05.2003, passed by the Assistant Commissioner of Labour, Nizamabad, is set aside and W.C.No.80 of 1998 is dismissed. No costs.

9. From the submissions of both sides, it is clear that claimants have already withdrawn half of the awarded amount. Considering the facts and circumstances and relationship between the parties, as the award is set aside, the Insurance Company is at liberty to withdraw the remaining half, which is in the deposit of lower Authority and to recover the remaining half which was already withdrawn by claimants from the owner of the tractor ie., 4th respondent herein.

10. Miscellaneous Petitions, if any, shall stand dismissed.

S. RAVI KUMAR, J

22nd January 2015.
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[\[1\]](#) (2007) 13 Supreme Court Cases 446