THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A.No.3884 of 2002

JUDGMENT:

This appeal is preferred by OP No.3/Insurance Company aggrieved by the Award in W.C.No.11 of 2000 dated 01.10.2002 passed by the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ananthapur, wherein and whereby the learned Commissioner allowed the claim petition of the claimants and awarded compensation of Rs.1,95,619/-.

2) The factual matrix of the case is thus:

a) The claimants are the parents of the deceased Nabi Rasool. Their case is that their son was working as a mechanic under OP No.1 since eight years prior to his death that was occurred on 04.08.1998. He was getting a salary of Rs.1,500/- per month and Rs.100/- as batta per day. The deceased was aged 24 years. While so, OP No.1 deputed the deceased to attend the repair works on lorry bearing No. AP 02 T 2526 on 04.08.1998 which belonged to OP No.2 and insured with OP No.3. While the deceased was attending the repairing work at Kapu Chennampalli and when he removed housing by fixing the jockey, the jockey was loosened and the lorry with cement load turned to its left and fell on the deceased and he died. The claimants pleaded that since the deceased was an employee under OP No.1 and died during the course of employment under OP No.2 and as the lorry was insured with OP No.3, all the three opposite parties are liable to pay compensation and they claimed Rs.2 lakhs.

b) It appears OPs.1 and 2 did not file any counter and only OP No.3 filed counter and opposed the claim inter-alia contending that all the petition averments were false. OP No.3 denied the age, avocation and employment of the deceased under OP No.1 and the manner of accident. OP No.3 further contended that the deceased would not come under the definition of the workman under OP No.2 and therefore, OP No.2 and consequently, OP No.3 who is the insurer of OP No.2 are not liable to pay any compensation. It also contended that the policy would cover the risk of only the driver, cleaner and seven numbers of hamalees of OP No.2 and deceased would not come under any of the aforementioned categories and therefore, the OP No.3 is not liable to pay compensation.

c) During enquiry, AWs.1 and 2 were examined and Exs.A1 to A5 were marked on behalf of the claimants/applicants and RW1 was examined and Exs.B1—policy copy was filed on behalf of OP No.3.

d) The learned Commissioner on appreciation of facts and evidence has held that the deceased at the relevant point of time was on duty under OP No.2 and met with accidental death during the course of employment and hence, OP No.2 is liable to pay compensation and since Ex.B.1 policy was in force by the date of accident, OP No.3 is liable to indemnify the liability of OP No.2.

Thus, the Commissioner fastened the liability on OPs.2 and 3. Regarding the quantum of compensation, the Tribunal taking into consideration the age of the deceased as 25 years and the nature of his employment, fixed his monthly income as Rs.1,800/- and arrived at the compensation as (Rs.1,800/- x 50/100 x 216.9F = Rs.1,95,219/- + Rs.400/- (court fee)) = Rs.1,95,619/-. Hence, the appeal by the Insurance Company.

3) Heard arguments of Sri A.V.K.S.Prasad, learned counsel for appellant/OP No.3 and Sri M.V.Prathap Reddy, learned counsel for the respondents 1 and 2/claimants. Notice sent to respondents 3 and 4 served, but none appeared on their behalf.

4) Learned counsel for the appellant would argue that the deceased was an employee under OP No.1 and he was not an employee of OP No.2 and therefore, OP No.2 who was not an employer of the deceased would not attain any liability to pay compensation for his death and consequently, OP No.3 who is the insurer of OP No.2 would not be liable for any indemnification. He forcibly argued that the Commissioner failed to appreciate these facts and erroneously fastened liability on OPs.2 and 3. He thus prayed to allow the appeal and exonerate OPs.2 and 3 from the liability.

5) Per contra, the learned counsel for the respondents would argue that though the deceased was an employee under OP No.1, however on his behest he went to attend the repairing works of the lorry of

OP No.2 and while attending the said repair works, he met with death when the lorry slipped and fell on him and thus, at the relevant time since his services were engaged by OP No.2, he could be said to be under the temporary employment of OP No.2 and therefore OP No.2 was liable to compensate for the death of deceased and since the policy was in force on the date of accident and as the deceased died in the capacity of cleaner and mechanic of OP No.2, the policy would squarely cover the risk of the deceased and hence, OP No.3 is bound to indemnify the liability of OP No.2 and the Commissioner rightly fixed the liability of OPs.2 and 3 and there are no merits in the appeal and hence the appeal may be dismissed. In support of his contention, he placed reliance on ***Zila Sahakari Kendrya Bank Maryadit vs. Shahjadi Begum***[1].

6) In the light of the above rival arguments, the point for determination in this appeal is:

"Whether the award passed by the learned Commissioner for Workmen's Compensation fastening liability on OPs.2 and 3 is factually and legally sustainable?

7) ***POINT:*** The accident, involvement of lorry bearing No. AP 02 T 2526 and death of deceased are not in dispute. It is also not in dispute that the deceased was originally the employee under OP No.1. The bone of contention is whether the deceased was under the employment of OP No.2 at the relevant time of accident or not. In this regard, the evidence of A.W.2 S. Ghouse would reveal that he was

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[1] (2006) 11 SCC 692

working as driver under OP No.2 in the lorry bearing No. AP 02 T 2526 and the said lorry broke down near Kapu Chennampalli and so he went and called the deceased Nabi Rasool, the mechanic and while the deceased was attending the repairs of the vehicle by adjusting the jockey, the said jockey slipped off and thereby the lorry turned and fell and the deceased crushed to death. He further stated that on getting instructions from his owner i.e., OP No.2 to fetch a mechanic for attending the repair works, he went and brought the deceased. He further stated that at the time of accident, he was at the vehicle and he went and gave report to the police after the accident. He stated that he was not a relative of the applicants and he gave the money for repairs which was given by OP No.2. He also stated that the deceased attended the repairing works on being instructed by OP No.1. The evidence of AW2 could not be shattered in the cross-examination. Thus, his evidence would manifestly show that the deceased was originally an employee i.e., a mechanic under OP No.1 and when the lorry belonging to OP No.2 fell in repairs in the midway at Kapu Chennampalli, on the instructions of OP No.2, AW2 who is the driver of the said lorry went to fetch a mechanic and approached OP No.1 and asked for mechanic and on the instructions of OP No.1 the deceased went along with AW2 to effect the repairs of the lorry bearing No. AP 02 T 2526 and while attending the repairs, the jockey fixed under lorry slipped and thereby the lorry turned and fell on the deceased causing his instantaneous death.

8) In the light of the above factual scenario, the crucial question that would arise is whether the deceased can be treated as temporary employee of OP No.2 for fixing liability on OP No.2 and also his insurer—OP No.3.

9) The issue is no more res-integra. In the cited decision, the Apex Court observed thus:

> "**Para—11.** *The Act was enacted to provide for payment by certain classes of employers to their workmen of compensation for injury by accident. The term "employer" has been defined in Section 2 (1)(e) of the Act in the following terms:*
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> *"2(1)(e) 'employer' includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him."*
>
> ***Para—12.*** *However, the term "employee" has not been defined in the Act. The definition of employer, therefore, embraces within its fold not only a person who employs another either permanently or on temporary basis but also those who were in control of the workman temporarily lent or let on hire to them by the person with whom the workman has entered into a contract of service. It is, therefore, a broad definition"*

Thus, the above observation of the Apex Court would show that when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, such other person would come under the term employer while the workman was working for him. When this observation is applied to the facts of the present case, OP No.2 would fit into the slot of '*employer*' since at his behest AW2 went and fetched the deceased who was an employee under OP No.1 and on whose behest the deceased went along with AW2 and attending the repairs of the lorry belonging to AW2. Therefore, OP No.2 is a temporary employer and liable to pay compensation.

10) So far as OP No.3 is concerned, it is an admitted fact that Ex.B1—policy was in force by the date of accident. According to RW1, it would cover the risk of driver, cleaner and seven hamalees. Since the deceased was attending more or less a cleaner's job i.e. attending repairs at the relevant time of accident, the policy would squarely cover his risk and therefore OP No.3 was liable to indemnify the liability of OP No.2. Therefore, the Commissioner was right in fastening liability on OPs.2 and 3. Hence, I find no merits in the appeal.

11) Accordingly, this appeal is dismissed by confirming the award passed by the Commissioner. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 08.11.2016
Murthy