

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A.No.802 of 2004

JUDGMENT:

Aggrieved by the Award dated 03.03.2001 in W.C.No.18 of 2000 passed by the Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour-I, Hyderabad dismissing the claim petition, the claimants have preferred the instant C.M.A.

2) The case of the claimants is that the 1st claimant is the wife, claimants 2 to 4 are minor daughters and claimants 5 and 6 are parents of the deceased J.Yadaiah, who worked as driver in lorry bearing No. AHH 3429 of O.P.No.1. The 2nd respondent/O.P.No.2 is the insurer of the said lorry. On 14.11.1999, during the course of his employment, when the deceased was proceeding in the lorry as driver from Vijayawada towards Hyderabad and when reached Suryapet with a load of steel, his lorry hit another lorry bearing No. AP37T 4726 and thereby J.Yadaiah died on the spot. The claimants filed claim petition claiming compensation of Rs.3,00,000/-. O.P.No.1 remained exparte and O.P.No.2 contested the claim denying all the material averments.

3) After full fledged enquiry, the Commissioner dismissed O.P on the findings that the claimants could not establish that the deceased was working as driver under O.P.No.1 and died during the course of his employment; Ex.M.1 –

insurance policy reveals the name of the owner of the vehicle as P.Venkateshm, whereas, the name of O.P.No.1 as per claim petition was M.Malla Reddy and though in page No.2 of the insurance policy, the transfer of the vehicle from P.Venkatesham to Malla Reddy was mentioned as on 13.05.1999, the claimants have not mentioned in the claim petition about the original owner and they have not impleaded the original owner as party. On these findings, the Commissioner held that it was not clear that the deceased Yadaiah was an employee under O.P.No.1 or P.Venkatesham and as such neither O.P.No.1 nor O.P.No.2 was liable to pay compensation to the claimants and dismissed the claim petition.

Hence, the appeal.

4) Heard arguments of Sri A.Srinivasulu, learned counsel for appellants/claimants and Mrs S.N.Padmini, learned counsel for respondent No.2/Insurance Company. Case against respondent No.1 was dismissed for default vide Court order dated 02.09.2011.

5) Learned counsel for the appellants/claimants would argue that the Commissioner erred in dismissing the O.P. on the wrong findings that the claimants failed to establish the employment of the deceased with O.P.No.1 and they also failed to add the original owner P.Venkatesham as party to the proceedings. He vehemently argued that the undisputed

fact is that the deceased met with an accident and died by hitting another lorry which indicates that the deceased was driver of the lorry. Further O.P.No.1 has not contested the matter to dispute the employment of the deceased under him. He argued that the Commissioner ought to have seen that the deceased was an employee under O.P.No.1, met with an accident and died during the course of his employment only. Learned counsel argued that admittedly the original owner of the vehicle was one P.Venkatesham and O.P.No.1 purchased the lorry from him on 13.05.1999 i.e. long prior to the date of accident. Therefore, by the date of accident i.e. 14.11.1999, O.P.No.1 was admittedly the owner of the vehicle. The factum of transfer was clearly mentioned in the insurance policy. In these circumstances, there was no necessity for the claimants to implead P.Venkatesham as party to the proceedings since long prior to the accident he sold away the vehicle to O.P.No.1. Therefore, the Commissioner ought not to have treated the non-joinder of original owner as fatal to the claim petition. He thus prayed to allow the appeal and set aside the award passed by the learned Commissioner.

6) Per contra, learned counsel for the respondent – insurance company would argue that except oral assertion of the claimants there was no record to prove that the deceased was an employee under O.P.No.1 and since there is no cogent evidence in this regard, the Commissioner has rightly held that they failed to establish the employment of the deceased

under O.P.No.1. Nextly, learned counsel would argue that the claimants have not impleaded P.Venkatesham, original owner as party to the claim petition and they have not produced any record to show whether the deceased was employee under the 1st respondent/O.P.No.1 or P.Venkatesham. Under those circumstances, their claim was rightly dismissed. He further argued that there are no merits in the appeal and the same may be dismissed.

7) The point for consideration is:

“Whether the Award passed by the Commissioner is factually and legally sustainable?”

8) **POINT:** Having heard the arguments and perused the material available on record, it must be said that learned Commissioner faltered in arriving at the findings mentioned above. The first finding of the Commissioner was that the claimants failed to establish the employment of the deceased under O.P.No.1. This finding cannot be countenanced for the reason that admittedly the deceased died while driving the lorry. Therefore, it is clear that he met with an accident during the course of his employment. So far as his employment is concerned, the plea of the claimants in their claim petition is that the deceased was working under O.P.No.1 and O.P.No.1 did not oppose these pleadings and on the other hand, he remained exparte before the lower Tribunal. As such it should be held that the deceased was

an employee under O.P.No.1. It is true that the claimants have not produced any documentary evidence to that affect, but circumstances as narrated supra would give an inference that the deceased was an employee under O.P.No.1. The next finding of the Commissioner to deny the claim is that they have not impleaded the original owner of the vehicle by name P.Venkatesham as party to the claim petition. This finding also does not hold water. Admittedly, P.Venkatesham was the owner of the vehicle and he sold the vehicle to O.P.No.1 with effect from 13.05.1999 and this fact was clearly mentioned on the policy as observed by the Commissioner in his award. The accident in this case was occurred on 14.11.1999 i.e., long after the transfer of vehicle. In those circumstances, the claimants had no obligation to implead the previous owner to the claim petition as he was not liable to meet their claim. Therefore, non-impleadment is not a consequence at all. However, the commissioner on an erroneous observation dismissed the claim by exonerating O.P.No.1 and O.P.No.2 from the liability.

9) So at the outset, none of the findings arrived at by the Commissioner is strong enough to dismiss the claim petition. Therefore, the claim petition is liable to be allowed. Since the Commissioner has not computed compensation and dismissed the claim, the matter needs to be remanded to the Commissioner for computation of just and reasonable compensation in terms of W.C. Act.

10) Accordingly, this C.M.A. is allowed by setting aside the Award dated 03.03.2001 in W.C.No.18 of 2000 passed by the Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour-I, Hyderabad with the observations made above and the Commissioner for Workmen's Compensation and Assistant Commissioner for Labour-I, is directed to assess the compensation payable to the claimants under W.C. Act and accordingly, pass award against O.P.No.1 and O.P.No.2 within two months from the date of receipt of a copy of this judgment.

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

Date: 03.11.2016
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U.DURGA PRASAD RAO, J

