

HON'BLE SMT JUSTICE ANIS

CMA No. 3260 OF 2004

JUDGMENT:

This appeal is filed by the appellants under Section 30-A of Workmen's Compensation Act, 1923 (for short 'the Act'), aggrieved by the orders dated 30.01.2004, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada, Krishna District in W.C. No. 54 of 2001, awarding compensation of Rs. 1,68,123/-.

2. The claimants filed the above W.C. under Section 22 and Rule 20 of Workmen's Compensation Act, 1923, claiming compensation of Rs. 2,00,000/- on account of death of one Gopalarao on 20.8.1997 in an accident occurred during the course of his employment.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the W.C.

4. The brief averments made in the petition are that the first applicant is the wife and the second applicant is the minor son of the deceased. The deceased Ch. Gopalarao was employed as a cleaner on a monthly salary of Rs. 1,750/- on the lorry bearing No. ADB 4228, owned by opposite party No. 1, to which opposite party No. 2 is the insurer, while going on the said lorry to attend Satyanarayana Swamy Vratam along with a marriage party, the said lorry went down the road and turned turtle into a ditch, as a result of which, four others were died on the spot and twenty members travelling in

the said lorry including the petitioner sustained grievous injuries all over the body and the said Gopalarao died on the spot. Hence, applicants filed WC praying the Court to grant compensation.

5. Before the Commissioner, the first opposite party was set *ex parte* and the second opposite party filed counter affidavit denying all the material averments in the petition and further stated that as per the conditions of the policy, the second opposite party was not liable to pay any compensation since the deceased is an unauthorized passenger. The Commissioner for Workmen's Compensation and Assistant Commissioner of Labour after consideration of the evidence of AW-1 and AW-2, awarded compensation of Rs. 1,68,122/- against the first opposite party but not against the second opposite party. Aggrieved by the same, the applicants preferred the present appeal.

6. Learned counsel appearing for the appellants argued that the Court below having held that the owner of the lorry is responsible to pay the compensation for the death of the deceased, who was working as cleaner erred in not fixing the liability against the insurance company though the insurance policy is in force on the date of the accident. Further the first opposite party, who is the owner of the vehicle, admitted that the deceased was working as cleaner and he used to pay monthly salary of Rs. 1,750/-. It is also argued that the lower authority erroneously held that the applicant failed to produce proof of employment of the deceased with the first

opposite party and not granted compensation against second opposite party, who is the insurance company.

7. On the other hand, learned counsel for the second opposite party argued that there is no relationship of owner and the employee between the deceased and opposite party No. 1. He also stated that during the course of examination, AW-2 admitted that he did not file any proof of employment of the deceased and also not filed proof of wages paid to the deceased. He further stated that six cases filed under Motor Vehicles Act at Vijayawada were dismissed against opposite party 2 and on the other hand, they are unauthorized passengers in the goods vehicle and prayed this Court for dismissal of appeal.

8. After considering the evidence on record, the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada awarded compensation at Rs. 1,68,123/- by taking total wages of the applicant at Rs. 1,750/- by assessing the loss of earning capacity of the applicant at 50%, fixing the liability to pay the compensation only against opposite party No. 1, but not against opposite party No. 2. Aggrieved by the same, the applicants filed the present appeal.

9. The main contention of the learned counsel appearing for the appellants is that the court below grossly erred in dismissing the claim against insurance company by holding that the owner of the lorry is only responsible to pay compensation for the death of the deceased, who was

working as cleaner on his lorry. Learned counsel also argued that the court below ought to have seen that the appellants being wife and son of deceased are dependents, as such, entitled for compensation even from insurance compay-R2. Therefore, the finding of the Commissioner making respondent No. 1/opposite party No.1 alone liable to pay compensation is to be set aside.

10. On the other hand, learned counsel appearing for second respondent argued that the finding of the Commissioner for Workmen's Compensation needs no interference.

11. Having regard to the submissions made by the learned counsel appearing for both sides, now the point that arises for consideration is:

“Whether the appellants had made out any case to set aside the award passed by the Tribunal and whether the liability to pay the compensation can be foisted against the second respondent/Insurance Company?”

12. **POINT:** The first applicant is the wife of the deceased examined as AW-1 and Exs A1 to A3 were marked on her behalf. According to applicant, her husband was the cleaner in the lorry belonging to the first opposite party and he used to pay Rs. 1,750/- per month as wages. In support of her evidence, the opposite party No. 1, who was set ex-parte, chose to be examined as AW-2, admitted the relationship with the deceased and stated that the deceased Gopalarao worked under him as a cleaner and was being paid Rs. 1,750/- per month. In the cross examination, AW-2

admitted that he did not file any proof of employment of the deceased. On the other hand, in specific terms he stated that the deceased Gopalarao worked under him as cleaner and he used to pay Rs. 1,750/- per month. Admittedly, as per the evidence of AWs 1 & 2, the relationship between the deceased and AW-2 was proved as owner and employee. Further it is also an admitted fact that the insurance policy was in force.

13. Considering these aspects not only the opposite party No. 1 is liable to pay compensation but the opposite party No. 2 is also liable to pay compensation to the applicants, who are the wife and son of the deceased Gopalarao, who worked as cleaner of the opposite party No. 1. Hence, the order 30.1.2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada in W.C.No. 54 of 2001, with regard to fastening of liability only against opposite party No. 1, is set aside and respondents 1 & 2/opposite party Nos. 1 & 2 are jointly and severally liable to pay compensation to the applicants.

14. With the above observation, this Civil Miscellaneous Appeal is allowed in part. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 27.09.2016
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