

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.135 OF 2005

JUDGMENT:

Opposite Party No.2 - M/s. New India Assurance Company Limited in W.C. Case No.29 of 2003 preferred the present appeal under Section 30 of the Workmen's Compensation Act, 1923, aggrieved over the order, dated 21.02.2004, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Eluru (for short 'Commissioner'), whereby and where-under, the Commissioner awarded a sum of Rs.2,85,360/- fixing liability on opposite party No.2 also for the death of one V. Satyam alias Satyanarayana (deceased) during the course of his employment.

2. The appellant herein and respondent No.4, who are owner and insurer of Tractor bearing No.AAN 5645, respectively, are opposite Party Nos.1 and 2 in the aforesaid W.C. Case No.29 of 2003, while respondent Nos.1 to 3, who are wife and children of the deceased, are the applicants.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in W.C. Case before the Commissioner.

4. Heard Sri U. Pratap Rao, learned counsel for Sri Kota Subba Rao, learned standing counsel for the appellant - opposite Party No.2,

Sri Nimmagadda Satyanarayana, learned counsel for respondent Nos.1 to 3 - applicants.

5. The Commissioner framed the following four points for consideration:

1. Whether the accident occurred during the course of employment or not?
2. Whether the driver of the vehicle is competent to drive the vehicle involved in accident or not?
3. Whether the O.P.1 and 2 are liable to compensation or not?
4. What are the wage and Age particulars to determine the quantum of compensation?

and holds that opposite party No.1, being employer of the vehicle involved in the accident liable to pay compensation to the applicants, and with regard to opposite party no.2, who is appellant herein, being the insurer of the vehicle, it is also liable to pay compensation, taking the age of the deceased as 53 years and wage as Rs.9,425/- per month, applied relevant age factor and arrived at Rs.2,85,360/- and fastened liability on both of them being owner and insurer jointly.

6. The liability fastened on the Insurer is now questioned in the present appeal, contending that there was no nexus between the death and course of employment, and the Commissioner failed to see that it is not a case of employment injury and opposite party No.2 - Insurer is not liable under Workmen's Compensation Act directly except in the event of employer becoming insolvent, that the deceased has overstepped from course of employment and in out of working hours

and, thus, there is no statutory liability and no contractual liability to indemnify the owner as there is no liability under terms and conditions of the policy and, therefore, sought to set aside the order and decree under appeal.

7. The evidence of RW.1 - B. Swamy Naidu, being the Divisional manager, A.P. Forest Development Corporation, would clearly show that he has asserted that death of the deceased did not occur during the duty period, but occur beyond duty period, but on humanitarian grounds, funeral expenses of Rs.2,000/- and other amounts, such as gratuity, Group Savings Insurance etc., were all granted. It is no doubt true that, the benefits which were granted to the legal representatives of the deceased cannot be said that they were paid out of humanitarian grounds, but due to their legitimate entitlement to get the same.

8. Be that as it may, in the presence of assertion that the death of deceased did not occur during the duty period, but it occurred beyond the duty period, the Commissioner was obligated with the duty to examine the consequences of such an assertion made by the Employer and to arrive at just conclusion. A perusal of the discussion made on the four points formulated by the Commissioner, referred to in the above, would show that he has concluded the order under challenge by writing seven paragraphs without there-being any discussion, but just extracting the evidence of the witnesses preceding

the points for determination formulated by him. When the same was pointed out by the learned counsel for the applicants, the learned counsel has not shown anything in the cross-examination of RW.1 to erase such assertions made by RW.1. Even, when looked at the fact-situation, it would clearly show that there was absolutely no necessity to use the tractor after sun-set and ought to have kept at the Nursery and the very fact that the accident took place while he was driving at 8.00 p.m. itself indicates that it was not during the duty period the death of the deceased occurred. Therefore, the finding recorded by the Commissioner that opposite party No.2 being insurer of vehicle is liable to pay compensation and deciding the said issue accordingly suffers from legal infirmity since such a finding was arrived at without proper appreciation of evidence on record, more particularly, the evidence of RW.1.

9. Hence, the present appeal is allowed, and the order and decree, dated 21.02.2002, passed by the Commissioner in W.C. Case No.29 of 2003 is set aside so far as appellant - opposite party No.2 is concerned, while confirming the order in all other respects. There shall be no order as to costs.

10. Since it is submitted by the learned standing counsel for opposite party No.2 that 50% of the amount was already withdrawn by the applicants, the appellant - opposite party no.2 is at liberty to recover the same from respondent No.4 - opposite party No.1.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 24, 2017.
Mgr

