

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CMA No.143 of 2007

ORDER:

This appeal is filed by the wife of the deceased and his two daughters against the order dated 30.12.2006 in W.C.No.27 of 2005 on the file of the Court of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada.

The brief facts of the case, as per the appellants, are that the deceased was employed as a driver on a monthly salary of Rs.4,000/- on a tractor bearing No.A.P.16 X 2872. He sustained a fatal injury on 14.04.2004 and he later died. The petitioners claim that the accident occurred in the course of employment and as the injuries were arising out of and in the course of employment, the appellants are entitled to compensation of Rs.4,00,000/- for the loss of life of the deceased in the accident. The first opposite party remained *ex-parte*. The second opposite party filed a counter strongly refuting the allegations made by the applicant. In paragraph 6 of the counter, the second opposite party took the plea that all the records and documents filed by the applicant reveal that the deceased is the son-in-law of the first opposite party. They also state that there is no employer/employee relationship in between the deceased and the first opposite party. They denied the fact that the deceased was driver of the tractor, which was involved in the accident and that the

deceased was aged 31 years and was drawing salary of Rs.4,000/- per month. Hence, the two essential questions that arise for consideration are:

- a) is there an employer/employee relationship between the deceased and the first opposite party.
- b) What are the wages of the deceased.

Heard learned counsel Sri Sai Gangadhar Chamarty for the appellants and Sri N.Mohan Krishna for 2nd respondent-Insurance Company.

The learned counsel submits on behalf of the applicant that D.W.1-(wife) was examined as a witness and Exs.A.1 to A.6 were marked. In addition to that one Sri B.Siva Nagaraju, a third party, was examined as a witness. Both the witnesses were cross-examined at length.

It is rightly pointed out by the 2nd respondent counsel that the first witness clearly stated that the first applicant is her mother-in-law and that first opposite party is her father-in-law. She also admits that the tractor of first opposite party, on which the accident took place, is used for agricultural purpose and that she and first opposite party have lands and the tractor is used for the said fields. Second witness is one B.Siva Nagaraju, who is supposedly third party to the issue. He deposes that the fact that the deceased is an employee of the first respondent. In the cross-examination, he clearly

admits that he came to Court at the request of the applicant only.

Exs.A.1 to A.6, which were marked on behalf of the claimant, do not in any way advance the pleas of the applicant to prove that there is an employer/employee relationship between the deceased and the first opposite party. They do not also support the case that he was drawing Rs.4,000/- as salary.

It is also an admitted fact that first opposite party is the father-in-law and the first applicant is his mother-in-law.

Learned counsel for the appellants argued that there is no prohibition against the employment of a son or a son-in-law by the father-in-law. He also argued that the lower Court did not consider the evidence properly.

Learned counsel for the respondents, on the other hand, argued that the employer/employee relationship is not there at all and that the entire application is an abuse of process of Court and is filed to make unlawful gain. He pointed out that the lower Court relied upon a judgment in ***National Insurance Company v. Sabia Begum***¹, wherein similar facts and circumstances exist. In that case also, the father remained *ex-parte* and the Insurance Company disputed the employment of the deceased pleading that the employment of the deceased is a concocted story to claim compensation. The learned single Judge noticed that except the interested

¹ 2005 (6) ALT 610

version of the wife of the deceased, there is no independent evidence to prove the employment. The learned single Judge also clearly held that unless the employment of the deceased is proved by independent evidence, the claimant is not entitled to compensation under the Workmen's Compensation Act, 1923.

In the light of this judgment and the facts of the case, it is clear from a reading of the entire record that (a) the deceased was the son-in-law of the first opposite party (b) while there is no prohibition that a son-in-law is to be appointed or to work with the father-in-law, the law requires in cases where the employer/employee relationship is denied, some credible proof is necessary to establish the employer/employee relationship. In the case on hand, despite the expressed denial of the employer/employee relationship, no proof is filed to prove that the deceased was an "employee" of first opposite party. The cross-examination of the first witness of the applicant also proves that the tractor was used for the personal fields of the first opposite party. Therefore, there is no evidence to prove that he was "an employee". The first opposite party, who is most qualified to speak about the employer/employee relationship also remained *ex-parte*.

In view of all the above, this Court is of the opinion that there is no infirmity in the order dated 30.12.2006 passed by the Commissioner of Workmen's Compensation, which is confirmed.

In the result, the appeal is dismissed. In the circumstances of the case, without any costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 09.11.2017
KLP

