

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

CMA No.93 of 2006

JUDGMENT:

This appeal is filed against the order, dated 31.03.2005, passed by the Commissioner for Workmen's Compensation, Eluru and Assistant Commissioner of Labour, Eluru (for short 'the Commissioner') in W.C. Case No.11 of 2003.

For the sake of convenience, the parties are referred to as they are arrayed in the W.C. Case.

Applicant No.1 is the wife, applicant Nos.2 to 4 are the children and applicant Nos.5 and 6 are the mother and father of the deceased Kavuri Abbulu. Opposite party No.1-Sri S.Venkateswara Rao is the driver of a lorry bearing No.AP 5U 2881, which is said to be involved in the accident. Opposite party No.2-Sri Korlapati Venkata Rao is the owner of the said lorry and opposite party No.3 is the Oriental Insurance Company Limited.

The averments of the application are to the effect that the deceased used to work as a coolie along with a group of labourers on the said lorry and when he was loading metal on to the said lorry on 13.07.2002, suddenly one big metal stone fell down from the lorry on his head and he received injuries, which, later, turned out to be fatal.

The opposite parties vehemently denied all the averments made in the application.

Befo`re the Commissioner, applicant No.1 was examined as A.W.1 and Exs.A1 to A9 were marked on her behalf. For the contesting opposite party No.3, one witness was examined as R.W.1 and Exs.B1 and B2 were marked.

The Commissioner, after considering the oral and documentary evidence, came to a conclusion that opposite party No.2 as owner and opposite party No.3 as insurance company are liable jointly and severally for the compensation payable. He accordingly, awarded a sum of Rs.2,06,253/- as compensation. It is this order that is impugned in the present appeal.

Heard Sri G.Vishweshwar Reddy, learned Standing Counsel for the appellant-opposite party No.3 and Sri K.Anand Kumar, learned counsel for respondent Nos.1 to 6-applicants.

The essential ground that is urged and argued strenuously by the learned Standing Counsel for the appellant is that the deceased was working in a quarry and he died as a result of an accident occurred in the quarry. He, therefore, argued that the owner of the quarry should have been proceeded against. Instead of that, according to the learned counsel for the appellant, the applicants filed the application stating that the accident occurred due to the negligent driving of the driver of lorry and that is the reason why they added opposite party No.1 (driver of the lorry)

and opposite party No.2 (owner of the lorry) as parties to the proceedings. It is his contention that the learned Commissioner totally ignored the evidence on record.

Learned counsel for the appellant pointed out that A.W.1 is applicant No.1 and in the chief-examination itself on 27.12.2004, she deposed as follows:

“My husband worked in the quarry of Bhaskar Rao for loading stones into the lorry bearing No.2881. One stone fell on the head of my husband. Due to injuries, he died after shifting him into the Hospital at Rajahmundry.”

In the cross-examination also, she admits that her husband worked in the quarry of Bhaskar Rao and that Bhaskar Rao used to pay the wages. Further questions were put to her about non-joinder of parties, which are not essential for the present appeal.

Learned counsel for the appellant pointed out that the FIR is marked as Ex.A1, which shows that when the deceased was loading stones, one stone came back and fell on his head. He also pointed out that Ex.A2 (Intimation of the accidents) in column No.4, states that the injury or accident was due to fall of a heavy weighted stone on the head of the deceased while working in quarry of Bhaskara Rao. Similarly, Ex.A3 is the statement of one E.Venkata Rao. It is stated that the stone, which was being loaded by the deceased, rolled back and fell on him. Similarly, Ex.A7, which is the case diary of the Police Station concerned, also shows in page No.4 that when the deceased was loading

black metal stones in stationed lorry bearing No. AP 5U 2881 along with remaining four coolies, unfortunately and accidentally, the stone which the deceased threw into the said lorry tumbled back from the lorry and fell on the head of the deceased.

Learned counsel for the appellant also pointed out that through R.W.1, two documents were marked, including Ex.B2 which is a letter, dated 18.10.2004, addressed by applicant No.1 to the Insurance Company praying for early settlement of her insurance claim. In the said letter, applicant No.1 stated that a stone came back and fell on the head of the deceased.

In the light of this evidence, learned counsel for the appellant strongly contended that Kavuri Abbulu did not die due to any mishap or rash and negligent act that can be attributed to opposite party No.1 or vicariously attributed to opposite party No.2. He also stated that the death occurred due to falling of heavy weight stone on the deceased in the quarry of Bhaskar Rao. Therefore, the present application filed against the driver and owner of the lorry is misconceived.

In reply to the same, learned counsel for the respondents argued that the accident occurred in the quarry and when the lorry was being loaded, and hence, the application was rightly filed against the owner of the lorry and its driver.

After considering the rival submissions made, it is clear and evident that neither opposite party No.1 nor opposite party No.2 is

responsible, in any manner, for the death of the deceased. There is no averment or proof that the driver of the lorry was, in any way, responsible for the said accident. Consequently, neither the owner nor the insurer of the lorry can be held liable. Unless there is a connection between the death and the opposite party Nos. 1 and 2, they cannot be made answerable for any claim. The evidence in this case shows that the accident occurred due to the heavy weighted stone and not due to the lorry etc.

In the light of these submissions and findings, which are not controverted in any manner, this Court is of the opinion that the application filed before the Commissioner is totally misconceived. It is filed against the wrong persons. The applicant failed to establish that opposite party Nos.1, 2 and 3 are in any way responsible for the accident.

This Court is of the opinion that the Commissioner grossly erred in holding opposite party Nos.1, 2 and 3 as liable. The Commissioner failed to notice that there is no employer-employee relationship between the deceased and opposite party Nos.1 and 2.

The admissions of A.W.1 in this case are clear and categorical. She admits that her husband was working in the quarry. She also admits that the owner of the quarry Bhaskar Rao used to pay the wages to the deceased. Therefore, in conclusion, this Court is of the opinion that the application filed before the Commissioner is misconceived and that there is no

employer-employee relationship between the deceased and opposite party Nos.1 and 2.

Therefore, the appeal is allowed and the order under appeal is set aside. In the circumstances, each party to bear their own costs.

Miscellaneous petitions, if any, pending in this appeal shall stand disposed of.

D.V.S.S.SOMAYAJULU,J

Dt:13.11.2017

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