

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Miscellaneous Appeal No.2867 of 2004

JUDGMENT:

The New India Assurance Company Limited, represented by its Branch Manager, is the appellant in the present Civil Miscellaneous Appeal.

2. Aggrieved by the order, dated 29.5.2004, in W.C.No.137 of 2003, whereby and whereunder the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-I, awarded a compensation of Rs.3,59,161/-; directing the Opposite Party No.1 to deposit the amount of Rs.3,59,161/-; out of which liability on the Opposite Party No.2 was fixed at Rs.1,50,000/- and, thus, jointly was fixed for Rs.1,50,000/- by way of Demand Draft to be drawn in favour of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-I, within 30 days from the date of receipt of that order. Usual clause of 50% penalty and interest at 12% p.a. will be imposed, in case amount is not deposited within the stipulated time, by exercising power under Section 4-A of the Workmen's Compensation Act, 1923, is also incorporated in the order under challenge.

3. The appellant in the Grounds of Appeal raised the following substantial questions of law:

“(a) Whether the death of an employee during the duty hours, though not due to any accident or other occupational hazard would

entitle the legal representatives for compensation under the Workmen's Compensation Act?

- (a) Whether the deceased can be construed as a workman as per the provisions of the Workmen's Compensation Act, as the post held by the deceased is not shown in Schedule-II and the case is not covered by Section 2 (1) (n) of the W.C. Act?
- (b) Whether the second application by the legal representatives of the deceased is maintainable in law when the earlier application was dismissed as withdrawn and admittedly the legal representatives without seeking liberty to file fresh application?
- (c) Whether the deceased workman is covered under Ex.B1 policy?
- (d) Whether the heart attack can be construed as accident caused by external violent and visible means?
- (e) In the absence of Workmen's Compensation Policy, whether the learned Commissioner has got jurisdiction to award compensation against the Insurance Company?"

4. Heard Sri C. Prakash Reddy, learned Standing Counsel for the Appellant, and Sri Nalluri Madhava Rao, learned counsel for the respondents 1 and 2 and Sri Ashok Talla, learned counsel for the 3rd respondent.

5. Though, the learned Standing Counsel for the appellant raised two main submissions, first, that the applicants 1 and 2, who are the respondents 1 and 2 herein, laid W.C. case at Ongole, and when Opposite Party Nos.1 and 2 raised objections therein, the applicants 1 and 2 have withdrawn the case, without seeking any permission to file fresh W.C., but filed again the present W.C. Case. It is, according to the learned Standing Counsel that the Commissioner just brushed it aside holding it as a mere technicality.

6. The second main submission is that the respondent-Employer/Opposite Party No.1 has taken Group Personal Accident Policy to cover the risk of his employees in case of accident caused by external violent and visible means. But, in the instant case, there is no external violence, and, therefore, insurer is not liable to pay the compensation. However, the Commissioner, without properly appreciating the said objection, sidelined it, and, therefore, the order of the Commissioner is liable to be set aside as it is patently illegal in granting the amount.

7. The learned counsel for respondents 1 and 2, of course, would support the order passed by the Commissioner and so also the learned Counsel for the 3rd respondent.

8. The factual aspect in the present case would reflect that one Sri B. Nepolian Babu was working in the Quarry of Opposite Party No.1 as Supervisor, near Chimakurthiof Prakasam District on payment of monthly wage of Rs.4,000/- and he was inducted into service on 6.1.2000, as he was holding Diploma in Mining Technology. On 26.2.2003, while he was on duty at quarry he went into the pit at about 9.25 a.m. and informed to his colleagues, Sri G.V. Subrahmanyam and Sri A.V. Ravi Kumar that he was getting chest pain. Then they took him from the pit and informed to Sri N. Hanumantha Rao, Senior Manager, who arranged the vehicle and he was taken to Jawahar Hospital, Chimakurthy, where the Doctor examined him and prescribed some medicines to purchase and bring.

When the said G.V. Subrahmanyam and Sri A.V.Ravi Kumar brought the medicines, the Doctor declared that Sri B. Napolian Babu died even before giving first aid. The deceased was aged 26 years old and hale and healthy, according to his parents, who are the applicants 1 and 2, and, thus, they laid the claim.

9. The Opposite Party No.2 has taken specific plea that there was no policy under Workmen's Compensation Act, and the Group Personal Accident Policy obtained by Opposite Party No.1 would not vest jurisdiction with the Commissioner to invoke the provisions of the Workmen's Compensation Act, 1923, and award compensation and the learned Commissioner, while framing Issues 1 and II, has not framed the proper issue touching whether in the absence of Workmen's Compensation Policy he has got jurisdiction to award compensation against the Insurance Company. However, in paragraph-29 relating to the objections raised by the Opposite Parties 1 and 2, he expresses thus:

“29. with regard to liability of both OP1 and OP2 raised a technical objection that the applicants withdrawn the case filed before Commissioner for Workmen's Compensation, Ongole, without showing any reason and the claim application was dismissed as not pressed. But they have filed again here in this Court without obtaining any permission as per Order XXIII Rule 3 (a) (b) of CPC. But CPC applies to WC cases to the limited extent only as per WC Act, 1923 and there is no provision to obtain permission from the previous authority to file fresh case. Further the case by CWC, Ongole was not decided on merits and even if permission is required it is only a technical objection and technical objections must pave way to substantial justice as was held by Hon'ble Supreme Court Justice Thakker in a case between *Collector, Land Acquisition Vs. Khatiji and Sons* citation AIR 1987 SC 1357 and hence applicants are entitled to initiate fresh claim and further the W.C. Act, 1923 is a beneficial legislation. Hence OP1 being the employer liable to pay compensation. But they stated that they have insurance coverage under OP1 to the limited

extent of Rs.1,50,000/- and hence OP2 is also liable to pay compensation. However the OP2's counsel argued that they have not undertaken the liability of the employer and the policy is personal accident policy and as per term-1 of the policy the insurance company is liable to pay compensation to workmen only if they are involved in an accident caused by external violence and visible means, then the company shall pay the insured the sum herein after. They stated that as the heart attack is not accident they are not liable but it is proved in para 24 and hence heart attack is not accident. But the OP2 argued that as it is a personal accident claim and as they have not undertaken the risk of employer liability they are not liable to pay compensation. But admitted that they have covered personal accident claim of 569 employees and the policy was in force and they are liable to pay compensation to the employees in the event of accident. But further stated that they are liable to pay Rs.1,50,000/- only to the employees died in an accident. They further stated that Authority has no power to grant compensation to the employees of OP1's company as it is not Workmen's Compensation policy and quoted some judgments but no citations were given no text was filed, hence I could not consider. They further admitted that the OP1 had paid premium amount towards personal accident claim and OP2 admitted liability to pay compensation to the employees involved in the accident. Hence it seems that the official of insurance company not advised properly as management intent to obtain insurance to cover the risk of employees. They should have advised OP1 to obtain Workmen's Compensation policy instead of personal accident claim. As the OP2 company admitted that they are liable to pay to the employees, I am keeping aside the technicalities and hold that the insurance company is liable to pay to limited extent as agreed along with OP1. The liability agreed by OP2 is to pay Rs.1,50,000/-, in the event of accident to OP1 company employees."

10. Now, looking at the excuse taken by the Commissioner, discernable from the afore extracted portion that though, Opposite Party No.2 raised the question that the authority has no power to grant compensation to the employees of the Opposite Party No.1 Company, as it is not Workmen's Compensation Policy and quoted some judgments but no citations were given and no text was filed and therefore, he could not consider. When the Commissioner refers to the submission of the learned Standing Counsel that the Opposite Party No.2 before him quoted authorities to fortify the said submission, he was obligated with the duty to examine the authorities

quoted by either the learned Standing Counsel to submit citations or the text of their citations or on his own ought to have procured them and then decided the controversy, which the learned Commissioner omitted to do. Perhaps, that may be the reason, no logical reasoning is adopted by the learned Commissioner in recording a definite finding on the objection raised as to jurisdiction of the Commissioner to entertain the claim and instead, just holding that they relate to mere technicalities, sidelined them.

11. The learned Standing Counsel, in fact, makes the submission that the claim is maintainable before the Ombudsman and Commissioner, under the Workmen's Compensation Act, 1923, is not the competent authority. He placed certain authorities rendered by the Hyderabad Ombudsman Centre, Case No.G-11-009-0170, Sri M. Satyanarayana vs. Reliance General Insurance Company Limited, by award dated 15.11.2007, where the Insurance Company is arrayed as respondent.

12. However, it would be appropriate if the matter is remitted to the Commissioner to decide whether to frame yet another issue as to in the absence of workmen's compensation policy whether the Commissioner can assume jurisdiction to award compensation against the Insurance Company and record a finding thereon. The learned Commissioner is also directed to give liberty to the applicants and Opposite Party Nos.1 and 2 to lead further evidence if they so intend

and to dispose of the W.C. within six months from the date of receipt of a copy of the order.

13. The present Civil Miscellaneous Appeal is, therefore, allowed setting aside the order passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, dated 29.5.2004 remanding W.C. No.137 of 2003 for fresh disposal, as directed in the above. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

Dt. 23.10.2017
gbs

A. SHANKAR NARAYANA

