

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

CIVIL MISCELLANEOUS APPEAL No.1085 OF 2006

JUDGMENT:

This is an appeal filed against the order dated 03.10.2006 in W.C.No.22 of 2005 passed by the Commissioner for Workmen's Compensation, Ongole.

The brief facts of the case are that on 05.12.2004, Byrapuneni Pothuraju(deceased)-driver along with cleaner Taadi Govind Venkataramana, were on duty, with a load, and stationed the lorry near Tirupathi Transport in Lathur of Maharashtra, at about 1.45 p.m. the deceased suddenly vomited and fell down unconsciously and died on the way to the hospital. A case in Crime No.53 of 2004 was registered by the Lathur Police. The said incident took place during the course of his employment. The applicants are the dependants of the deceased. Hence, they filed the application claiming compensation of Rs.4,00,000/-.

The 2nd respondent filed a counter denying all the allegations made in the application including age, wage, employment, death during the course of employment. After the pleadings were completed, evidence was taken. On behalf of the applicants, 1st applicant examined herself as A.W.1 and Tadi Govindarajulu was examined as A.W.2. On behalf of the respondents, 1st respondent examined himself as R.W.1 and Sri Mandapati Punnaiah was examined as R.W.2 by 2nd

respondent. Exs.A.1 to A.11 were marked for the applicants while Ex.R.1 was marked for the respondents.

The Commissioner for Workmen's Compensation, after going through the evidence and material documents, came to a conclusion that the death of the deceased was no doubt during the course of his employment but held that it cannot be said that the death is caused due to the stress and strain arising out of his employment. This order is now being assailed in the appeal.

Heard Sri T.Vinod Kumar Tadakamalla, learned counsel for the appellants and Sri V.Venkatarami Reddy and Sri Nimmagadda Satyanarayana, learned counsel for the respondents.

The only serious point that is urged and canvassed before this Court is about the connection between the death of the driver and his employment.

The facts reveal that the deceased drove the truck AP27U 7669 from Ongole to Lathur and reached his destination on 04.12.2004. The lorry was parked at the transport yard. The next day at about 1:15 p.m., the deceased started vomiting after his meal. He was rushed to a hospital where he was declared as "brought dead". The post mortem report has however not been filed. The request for post mortem was made as per Exs.A3 and A4 but the report is not filed. A.W.2 in his chief examination also states that

the post mortem was done, but, the same is not filed. Hence, the exact cause of death is not proven by any evidence.

However, the learned counsel for the appellants argued that the death was due to the stress and strain of his employment as a driver and therefore, there is a connection between the employment and the death. He relied upon ***The Union of India and others v. Sudhanshu Jyothi and others***¹ and ***The Divisional Controller, North East Karnataka Road Transport Corporation v. Sangamma and others***². Both of these were cases where the employee was actually working when the death occurred unlike in the present case where he had rested the previous night and the death occurred next afternoon after 13:15 hours. Even in ***Union of India's*** case (1 supra), the learned Judge relied upon earlier judgments of the Hon'ble Supreme Court reported in ***Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and another***³ and ***Malikarjuna G.Hiremath v. Branch Manager, Oriental Insurance Company Limited***⁴ wherein the following tests were laid down:

“1. There must be a casual connection between the injury and the accident and the accident and the work done in the course of employment.

2. The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury.

3. If the evidence brought on record establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the fact of each case.”

¹ 2017 ACJ 1875

² 2005 ACJ 455

³ 2007 ACJ 1

⁴ 2009 ACJ 721 (SC)

In reply, the learned counsel for the respondents also relied upon ***Shakuntala Chandrakant Shreshti's*** case (2007(11) SCC 668=2007 ACJ 1) and drew the attention of this Court to the following passages:

“24. There is a crucial link between the causal connections of employment with death. Such a link with evidence cannot be a matter of surmise or conjecture. If a finding is arrived at without pleading or legal evidence the statutory authority will commit a jurisdictional error while exercising jurisdiction.

25. An accident may lead to death but that an accident had taken place must be proved. Only because a death has taken place in course of employment will not amount to accident. In other words, death must arise out of accident. There is no presumption that an accident had occurred.

26. In a case of this nature to prove that accident has taken place, factors which would have to be established, inter alia, are:

- 1) stress and strain arising during the course of employment
- 2) nature of employment
- 3) injury aggravated due to stress and strain

27. The deceased was traveling in a vehicle. The same by itself can not give rise to an inference that the job was strenuous.

28. Only because a person dies of heart attack, the same does not give rise to automatic presumption that the same was by way of accident. A person may be suffering from a heart disease although he may not be aware of the same. Medical opinion will be of relevance providing guidance to court in this behalf.

29. Circumstances must exist to establish that death was caused by reason of failure of heart was because of stress and strain of work. Stress and strain resulting in a sudden heart failure in a case of the present nature would not be presumed. No legal fiction therefore can be raised. As a person suffering from a heart disease may not be aware thereof, medical opinion therefore would be of relevance. Each case, therefore, has to be considered on its own fact and no hard and fast rule can be laid down therefore.”

This judgment of the Hon'ble Supreme Court is a complete answer to the grounds raised in this appeal.

a) There is no medical evidence available for establishing the cause of death.

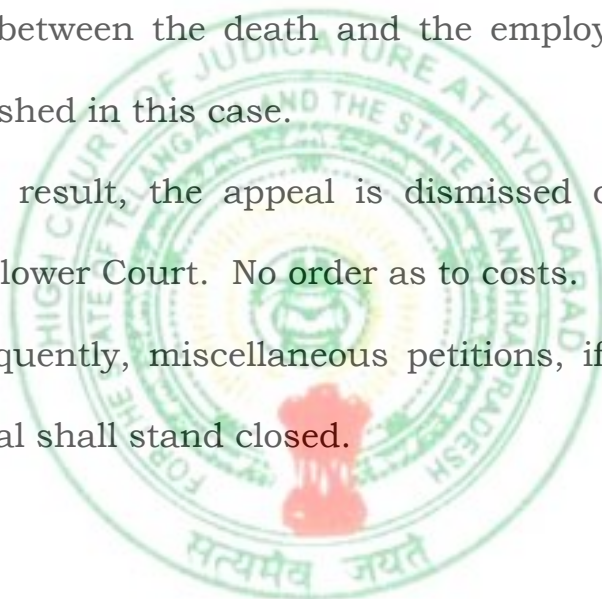
b) There is no evidence to show that there was stress or strain which either caused the death or aggravated the situation leading to the death.

c) The cleaner of the lorry was examined as A.W.2. He was an eye witness to the entire episode from the beginning of the lorry journey till the death of the deceased Pothu Raju. Nothing was elicited from him even in the chief-examination about the cause of the death or of the aggravating factors that may have caused the death.

For all these reasons, this Court is of the opinion that the order of the lower Court dated 03.10.2016 is correct. There are no reasons to interfere with the case. The critical connection between the death and the employment has not been established in this case.

In the result, the appeal is dismissed confirming the order of the lower Court. No order as to costs.

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



D.V.S.SOMAYAJULU, J

Date :06.12.2017
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