

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

C.M.A.No.1049 of 2006

JUDGMENT:

This is an appeal filed by the Insurance Company against the orders dated 26.09.2006 in WC No.176 of 2004 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1, Hyderabad.

The applicants are the wife, children and mother-in-law of one S. Bikshapathy who is supposed to have died in an accident that occurred on 04.08.2004. The respondents are the owner of the vehicle and two insurance companies which are supposed to have been insured the vehicle in question. The first applicant was examined as AW.1. For the second respondent, Sri S. Raghuram was examined. Further, second opposite party filed a copy of insurance policy, which was marked as Ex.B.1. On behalf of third opposite party, fax message of the Vijayawada branch office was marked as Ex.X.1. The Commissioner after examining the material on record came to the conclusion that compensation of Rs.3,25,654/- is payable along with interest. This order is impugned in the appeal.

A very serious objection was raised during the course of hearing as to the cause of death of the deceased. Sri Ramachandra Reddy Gadi, learned counsel for the appellant/National Insurance Company took pains to point out that the record in this case does not suggest that the

death occurred due to an injury arising out of and in the course of employment. He also pointed out that varying stands were taken at different points of time both about the death and insurance of the vehicle etc. He also argued that the deceased did not have a valid driving licence.

Sri Aella Madhava Reddy, learned counsel for the respondents/applicants supported the judgment and held that it is valid and reasonable order, while the learned counsel for the third respondent/United India Insurance Company argued that they are not liable at all to pay compensation.

On examination of the entire material on record and after hearing the learned counsel, this Court feels that there is substance in the submissions made about the cause of death. In the application filed for compensation, in para-2, the cause of death is stated to be "due to heart attack". As per these averments, the deceased was driving when he suddenly fell on the steering due to heart attack and died on the spot. When it comes to the evidence of first opposite party, which is filed as an affidavit in lieu of chief examination, the words 'heart attack' are scored out and the words "blunt injuries" are inserted by hand writing. Thus, there is a clear discrepancy between the pleading and the oral evidence.

In the cross-examination of AW.1, the witness admits that she does not know whether her husband died due to heart attack or some other reason. Along with her affidavit,

the first applicant has filed the FIR and case diary. They state that when the deceased was driving the vehicle, he suddenly collapsed on the steering. Thereafter, when the questions were put in the cross-examination on 02.05.2006 about the cause of death, the post-mortem report was obtained and filed as Ex.B.7. In the post-mortem report, the Doctor certifies the cause of death as “blunt injury on chest and abdomen”.

Therefore, there is a discrepancy about the cause of death. It is a fact that as per the settled law, for injuries arising out of and in the course of employment, the workman can maintain a claim for compensation. If the injury/death is due to stress and strain of the employment, or any other aggravating condition, a claim definitely lies. Similarly, if the injury or death is due to an accident, then also a claim will lie. But the quality of evidence is definitely different for both the cases. This is beyond doubt.

In the case on hand, the discrepancies between the pleading and the evidence are clear. In the application made for compensation, the words ‘due to heart attack’ are typed with different type writer. Therefore, it is clear that after the application was typed because cause of death was deliberated, the words ‘due to heart attack’ were added. But in the chief examination, again the words ‘heart attack’ were scored out and blunt injuries are written by hand. The cross-examination was also fairly direct and the witness admitted

that she did not know the cause of death. She also admitted that initially she did not file a post-mortem report, but she denied the suggestion that there is no nexus between the employment and the death. As mentioned earlier, the evidence in this case is not enough either to justify a finding of an accidental death or a death arising out of and during the course of employment due to the aggravated conditions of the employment. This issue is, therefore, decided in favour of the appellant that the cause of death is not clear.

The appellant was also right in pointing out that there is a delay in lodging of FIR. As per the statements at various places, the death occurred on 04.08.2004 at about 11.30 a.m. whereas, the FIR was registered on 05.08.2004 at about 13.00 hours. This delay is not satisfactorily explained. It is the contention of the learned counsel for the appellant that the delay is not properly explained and that the entire plan was to pass off a natural death as a death was occurring in the course of employment.

The counsel for the respondents/applicants, however, states that some delay in lodging of the FIR is not a cause to reject the same. It is true that the small delay in filing FIR is not really fatal, but the fact remains that the evidence of the first applicant is contrary to the pleading and there is no satisfactory proof whether the death occurred due to natural reasons or due to any accident or aggravated of the

employment conditions. Hence, this Court holds the delay in lodging the FIR should have been explained.

The third contention of the learned counsel for the appellant is that the deceased did not have a valid licence. The original driving licence marked as Ex.A.3 is available and it shows that he is entitled to drive 'HTV' which otherwise mean heavy transport vehicle. Therefore, this Court holds that the deceased was a licenced driver of vehicle the in question.

Therefore, on review of the entire evidence and material on record, this Court is of the opinion that the contention of the learned counsel for the appellant is right and there is no proof or connection between the death and the employment. The cause of death is not proved adequately. The post-mortem report shows that the deceased died due to blunt injuries sustained on the chest and abdomen. There is no record of the same in the FIR or case diary. If an accident actually occurred and the steering wheel or such other object impacted the chest or the abdomen of the deceased, then it would have been recorded that such an accident actually occurred to the lorry in question. As the same is not visible from any of the records, it is apparent that the vehicle in question did not meet with any accident that caused the death.

For all the above reasons, this Court is of the opinion that the Commissioner for Workmen's Compensation

committed an error in awarding the compensation as prayed for. Unless and until the cause of death is proved with a reasonable certainty, in cases under the Workmen's Compensation Act the employer or the insurer cannot be held to be liable to pay the compensation.

In the result, the Civil Miscellaneous Appeal is allowed and the impugned order dated 26.09.2006 in WC No.176 of 2004 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1, Hyderabad is set aside. However, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

Date: 21.11.2017
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D.V.S.S. SOMAYAJULU, J

