

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.187 OF 2005

JUDGMENT:

The present Civil Miscellaneous Appeal under Section 30 of the Workmen's Compensation act, 1923 is preferred questioning the dismissal order dated 23.12.2004 passed by the learned Commissioner for Workmen's Compensation - cum - Assistant Commissioner for Labour - II Circle, Guntur, whereby and whereunder, he disbelieved the case put-forth by the appellants - applicants, who are legal heirs of one Nageswara Rao, who said to have died during the course of employment under respondent No.1, owner of the lorry bearing No.ABB - 6604.

2. The learned Commissioner having formulated the issues, while analyzing the evidence of AWs.1 to 5 and the documents marked as Exs.A-1 to A-6 in respect of the accident lorry, recorded a positive finding that the case set out in the application is not proved. In fact, the manner in which the deceased said to have sustained injuries is not shown. There was delay of six (6) days in lodging the First Information Report (FIR). Even the FIR does not disclose relevant aspects as to how the deceased sustained injuries. More so, when the deceased was only a cleaner, as projected by the applicants, the question of sustaining injuries while loading or unloading does not arise. Even otherwise, evidence of the medical officer would show that the test results would show that the deceased was affected by

H.I.V. positive and ultimately he was got discharged by his relatives and taken home as there was no improvement and he died later. It is observed by the learned Commissioner that postmortem report is not found. These were all the circumstances, basing on which the order of dismissal was passed.

3. Heard Sri N. Subba Rao, learned counsel for the appellants - applicants, and Sri V. Sambasiva Rao, learned standing counsel for the insurance company.

4. The appeal against respondent No.1, owner of the lorry bearing No.ABB-6605, was dismissed for default on 18.03.2016.

5. Perused the order and the material on record.

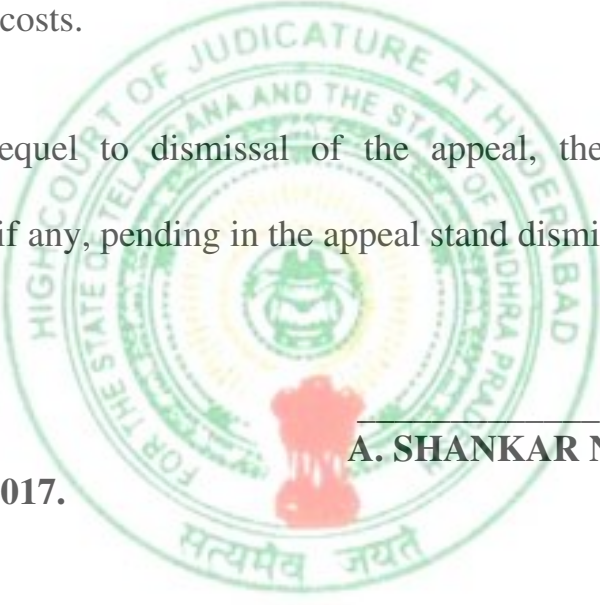
6. It is clear from the evidence on record that nowhere it is to be found as to how the deceased did sustain any injuries, what was the treatment and the procedure he had undergone. Though, it is stated that 'lumbar L-1 fracture dislocation with para plegia was present when he was admitted in Government General Hospital, Guntur, and there was Flail Chest right side with lung contusion and fracture of mandible and even developed bed sore. The peculiar thing is that the manner in which he sustained injuries is not forthcoming at all. When he is projected as a cleaner, there is no question of loading or unloading any material in to the lorry, more particularly, when the postmortem report is not forthcoming. It is no doubt, true, as contended by the learned standing counsel, his discharge was not after

he gained normalcy as there was no improvement and subsequently, he died. Further, the six (6) days delay in lodging the FIR also would give rise to suspicion in regard to the claim laid by the applicants and the stand they have taken. Thus, there is absolutely no illegality in recording the finding by the learned Commissioner dismissing the claim petition. Hence, no interference is warranted.

7. Therefore, the Civil Miscellaneous Appeal is dismissed confirming the order under challenge in all respects. There shall be no order as to costs.

As a sequel to dismissal of the appeal, the Miscellaneous Applications, if any, pending in the appeal stand dismissed.

October 23, 2017.
PV

**A. SHANKAR NARAYANA, J**