

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

CIVIL MISCELLANEOUS APPEAL No.308 OF 2007

JUDGMENT:

This is an appeal filed against the order dated 08.01.2007 in W.C.No.196 of 2005 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda.

The brief facts of the case are that the deceased Shaik Fayazuddin @ Mustafa was working under the employment of opposite party No.1 as driver on his tractor and trailer bearing Nos.ATS 1706 and 1707. He was earning a monthly salary of Rs.4,000/-. On 06.01.2000 at about 2.00 p.m., the deceased was driving the said tractor and trailer from Somavaram Village to Athmakur(S) with labourers. On the way, when the said tractor and trailer reached the outskirts of Dacharam Village, it turned turtle. As a result, the deceased who was driving the said tractor and trailer sustained grievous injuries and died on the spot. The deceased was aged 22 years at the time of his death. The applicant is the mother of the deceased and she is the dependent on his earnings. Hence, the applicant filed the said W.C. seeking compensation of Rs.4,00,000/- against the owner and insurer of the said tractor and trailer.

The opposite party No.1 failed to file his counter and was set ex parte. The opposite party No.2 filed counter denying all the material allegations mentioned in the

application. On behalf of the applicant, she herself was examined as P.W.1 and marked Exs.A.1 to A.9. On behalf of the opposite parties, none were examined. However, the counsel for opposite party No.2 filed the copy of insurance policy marked as Ex.B1. The Commissioner for Workmen's Compensation, after assessing the evidence, came to a conclusion that the opposite parties No.1 and No.2 are jointly and severally liable to pay an amount of Rs.2,23,249/- to the petitioner towards compensation. This order is now being assailed in the appeal.

Heard Sri V.Sambasiva Rao, learned counsel for the appellant and Sri M.Madhava Reddy, learned counsel for respondent No.2.

The principal focus of the argument was on grounds 3, 4 and 6 raised in the grounds of appeal. It is the contention of the learned counsel for the appellant that a) the deceased was the son of the applicant and of opposite party No.1 who is the owner of the vehicle involved in the accident, b) there is no evidence to prove that the deceased was employed with opposite party No.1 and c) that the complaint is “fraudulently” made and is filed five years after the alleged accident.

It is settled law that fraud unravels everything; including the most solemn judicial acts also. If fraud is perpetuated; it can be raised and pointed out the appellate

stage also. The purity of the judicial system demands the elimination of such frauds.

Against this backdrop, the facts will be examined in this case. It is a fact that the appeal is filed five years after the alleged accident. Whether the “Tribunal” can condone the delay under Section 5 of Limitation Act is a moot point but the same is not urged in the appeal. Be that as it may the important point urged by the learned counsel for appellant is that only one witness (the applicant) was examined in this case. She is the mother of the deceased and the wife of the owner (opposite party No.1). The owner (opposite party No.1) remained ex parte. It is clear that no documentary evidence is filed to prove the “employer-employee relationship” at all between the deceased and opposite party No.1. Except the interested testimony of A.W.1/applicant, there is no legally acceptable evidence at all to prove the employer-employee relationship.

In reply, the learned counsel for the respondent relied upon the judgments in ***National Insurance Company Limited v. Rattani Devi and others*¹, *United India Insurance Company Limited v. Baljeet Kaur and another*² and *Jayavarapu Rajamma and others v. Laxminarayana and others*³.**

¹ 2006 ACJ 717

² 2010 ACJ 964

³ 2007(6) ALD 306

In ***National Insurance Company Limited's*** case (1 supra), the Court held that there is no prohibition in law for a father engaging his son as an employee.

In ***United India Insurance Company Limited's*** case (2 supra), the driver of the vehicle was the son who died in the accident. Both it is noticed that the owner of the vehicle (father) and a cleaner were examined in this case to establish the employer-employee relationship.

In ***Jayavarapu Rajamma's*** case (3 supra) was a reference made to the Honourable Division Bench of this Court. The reference is about a specific question as can be culled out from paras 2 to 4 of the report. The same was answered by the Division Bench. This judgment is not really relevant to decide the issues raised in this appeal.

The following cases cited by the learned counsel for the appellant on the other hand are more apposite and relevant to the case on hand.

a) In ***National Insurance Company Limited v. Sabia Begum and others***⁴, the learned Single Judge noticed the following facts:

“10.In this case, it is the case of the applicants that the deceased was employed by his own father, who was the first opposite party and, he died during the course of employment. The appellant/insurer primarily disputed the employment of the deceased with the first opposite party on spite of such defence from the insurer, there is no independent evidence adduced on behalf of the applicants to prove the employment of the deceased. Though, it was the case of the applicants that the deceased was in employment of the opposite party, but except the interested version of the A.W.1 there is no other independent evidence on record to prove that the deceased was employed by his own father.

⁴ II(2006) ACC 692

11.As much as the very employment was in dispute, the real question in controversy is, whether the deceased was in employment or not, as on the date of accident, with the opposite party. As I have already discussed, except the self-serving statement of the interested witness, i.e., A.W.1, there is no other independent evidence on record to prove the employment of the deceased, as such, it cannot be said that the deceased was employed by his own father for the purpose of driving the vehicle. May be that unfortunate applicants are dependents of the deceased, but in absence of proving employment of the deceased with the owner of the vehicle, they are not entitled to claim any compensation. Though I am conscious of the fact that the scheme of the Act is a beneficial legislation to the accident victims, but, at the same time, the various provisions of the legislation which are in the nature of quasi-penal one, have to be construed strictly.”

b) In ***Gottumukkala Appala Narasimha Raju and others v. National Insurance Company Limited and another***⁵, it is held as under:

“24. In our considered opinion, it is wholly absurd to suggest that the husband would be a “workman” of his wife in absence of any specific contract. We have no doubt in our mind that for the purpose of proceeding under the 1923 Act, only the appellants have concocted the story of husband and wife living separately. If they have been living separately in view of certain disputes, the question of husband being a “workman” under her appears to be a far-fetched one.

25. Technically, it may be possible that the husband is employed under the wife, but, while arriving at a conclusion that when a dispute has been raised by other side, the overall situation should have been taken into consideration. The fact, which speaks for itself shows that the owner of the tractor joined hands with the claimant for laying a claim only against the insurer. The claim was not bona fide.

26. No documentary proof to establish the contract of employment was produced. No independent witness was examined.”

This Court finds considerable force in the contention raised by the appellant and the case law cited by them is applicable to the facts on hand and the defences raised.

There is no prohibition for a child; sibling or spouse being engaged as an employee but when the matter comes before a Court or a Tribunal, the evidence on this aspect must

⁵ 2007(3) SCALE 364

be clear; categorical and acceptable. The Courts/Tribunals should also scrutinize the entire evidence in such cases with greater care and caution. The judicial system should not be allowed to be misused for personal gains. Both the Judges/Tribunals dealing with such cases and the lawyers engaged in such cases should exercise greater care and caution. Purity of the judicial system demands eternal vigilance and care from the Courts/Tribunals and Advocates.

The order of the lower Court in this case is not based on evidence. To say the least, there is a complete non-application of mind to the facts and the pleadings. The lack of evidence is clear, yet the compensation was awarded. This Court, therefore, has no hesitation in setting aside the impugned order. The appeal is therefore allowed with costs.

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

D.V.S.S.SOMAYAJULU, J

Date : 11.12.2017
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