

**THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

**CIVIL MISCELLANEOUS APPEAL No.117 OF 2005**

**JUDGMENT:**

Opposite Party No.2 – National Insurance Company Limited in W.C.No.115 of 2002 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour - I, Guntur (for short, 'the Commissioner') preferred the present appeal questioning the order dated 06.07.2004 passed in the said W.C., whereby and whereunder, a sum of Rs.1,75,892/- was granted as compensation for the death of one A.Krishnarao while under employment.

2. The appellant herein is Opposite party No.2 in the aforesaid W.C., whereas respondent Nos.1 to 3 herein are the applicants, and respondent No.4 herein, who is owner of the lorry bearing No. AP 7T 2228, is Opposite party No.1.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Commissioner in the W.C.

4. The Commissioner, having found the evidence of AW.3, owner of the lorry, that there are two drivers and two cleaners on the lorry bearing No. AP 7T 2228, amongst whom A.Krishnarao (deceased) and Narasimharao are the drivers and Yesuranam and Babu are the cleaners on the said lorry, agreed with his evidence and found that the deceased was the second driver under the employment of Opposite Party No.1 and the body of the deceased was cremated at Gowhati, as there was delay in communication of the death and the body started rigor

mortis causing foul smell, and the medical officer's opinion was that the deceased died due to heart attack during the course of his employment and taking the age of the deceased as 43 years, income at Rs.2,587/- + VW of Rs.389/-, totalling to Rs.2,976/-, but restricting it to Rs.2,000/-, arrived at Rs.1,75,540/- towards compensation payable by Opposite Party Nos.1 and 2 and stamp duty of Rs.352/- was added and, thus, granted the said amount and directed Opposite Party Nos.1 and 2 to deposit the same within 30 days from the date of receipt of the award.

5. Yet another reason in arriving at such finding is that in the documents marked as exhibits, the name of the deceased A.Krishnarao was shown as driver of the lorry in question, and the owner of the vehicle examined as AW.3 admitted the employment of the deceased as driver and the cause for the death of the deceased as heart attack and, thus, the Commissioner found that the evidence of AW.3 is in accordance with the evidence of AW.4, who is the co-driver of the said lorry. The other details are mentioned in paragraph '1' at page No.4 of the order. Further, the Commissioner, relying on the ruling of this Court in **Depot Manager, APSRTC v. Gurrapu Anjamma**<sup>1</sup>, passed the aforesaid award making both Opposite Party Nos.1 and 2 liable. In the present appeal, the said order is questioned on various grounds.

6. One of the grounds raised in the present appeal is that the Commissioner went wrong in fixing liability on Opposite Party No.2 i.e., the appellant, believing the evidence of the employer i.e., Opposite Party

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<sup>1</sup> 1999 (5) ALT 684

No.1 examined as AW.3, when he failed to contest the claim itself and remained *ex parte* and, therefore, it gives rise to collusion between the applicants and Opposite Party No.1, but the Commissioner, somehow, overlooked the same. The other main ground is that the Commissioner, somehow, sidelined the fact that the terms and conditions of policy were violated by Opposite Party No.1 – owner of the vehicle in admitting the claim before the Commissioner without the consent of the insurer. The third main ground is that no documents, including the First Information Report, post-mortem, Inquest or death certificate, were filed to show that the deceased died while working on the vehicle. These have been the main grounds raised in the present appeal. The ancillary grounds, which are referred to, need not be adverted to.

7. Heard Sri E.Venugopal Reddy, learned counsel for the appellant, and Sri N.Subba Rao, learned counsel for respondent Nos.1 and 3.

8. In fact, the present appeal was dismissed for default against respondent Nos.2 and 4 herein. Respondent No.2 herein is admittedly one of the applicants and Respondent No.4 is no other than the owner of the lorry. The insurer has not taken pains to see that the *ex parte* dismissal order passed against respondent Nos.2 and 4 is set aside, at least to the extent of respondent No.4, in whose absence the request now made cannot be effectively and completely adjudicated upon. On this short ground alone, the present appeal is liable to be dismissed, in which case, there is no need to refer to and examine whether the findings

recorded by the Commissioner are correct or patently illegal warranting interference. No authority is relied on by the learned counsel for the appellant that in such an event, the appeal can be disposed of even in the absence of the owner of the vehicle on the mere ground that he remained *ex parte*. It is not the case that the owner did not participate in the proceedings, though he remained *ex parte*. No medical officer is examined on behalf of the applicants, as could be seen from the above narration.

9. Now, turning to the other main grounds raised by the learned counsel for the appellant, when a definite finding is recorded by the Commissioner based on appreciation of evidence on record, the same does not warrant interference, unless it is shown as utterly perverse. It is no doubt true, that one of the grounds agitated by the appellant is that the relevant documents were not filed showing that the deceased died due to heart attack, but when medical opinion is presented by the applicants showing that the death of the deceased was due to heart attack, as recorded by the Commissioner in the order under challenge, mere non-examination of the Medical Officer is no ground to hold that the finding recorded by the Commissioner is perverse. It is no doubt true, the post mortem certificate and other documents pointed out by the insurer were not exhibited, but they do not account for any material lapse to throw away the claim of the applicants, more particularly when the present appeal was allowed to be dismissed against the owner. Therefore, there is no merit in the present appeal and the same is liable to be dismissed on

account of failure to set aside the dismissal order passed against the owner.

10. Accordingly, the appeal is dismissed. No order as to costs.

11. As a sequel thereto, miscellaneous petitions, if any, pending in the instant appeal, stand closed.

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**JUSTICE A.SHANKAR NARAYANA**

03.10.2017

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