

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

CMA No. 14 of 2007

JUDGMENT :

This is an appeal filed against the order dated 03.10.2006 in WC.No.5 of 2003 passed by the Commissioner of Workmen's Compensation, Ongole.

The applicants are the father and brothers of the deceased-cleaner. They filed the application against opposite parties 1 and 2, who are owner of the lorry and the insurer of the lorry respectively claiming compensation of Rs.2,50,000/- for the death of the deceased. The averment of the applicants is that the deceased was aged 16 years and employed as a cleaner on lorry AP 16 TT-4222 of the first opposite party on a monthly wage of Rs.2,500/-. He went on duty from 04.08.2002 along with driver and that on 14.08.2002 the driver reported that the deceased was missing; that after a period of time the body was found in a canal; that the driver escaped from the spot and a case was registered in Crime No.67 of 2002 at Martur Police Station. Opposite party No.1 remained *ex parte* and opposite party No.2 filed counter denying the accident and what all stated in the claim petition.

The first applicant was examined as AW.1 and Exs.A.1 to A.3 documents were marked. On behalf of the opposite party No.2, Ex.R.1-the copy of insurance policy was marked.

After assessing the evidence, the Commissioner came to a conclusion that the accident does not have any connection with the duties of the cleaner and there is no nexus to the accident and the employment and therefore, under any stretch of imagination, it cannot be said that the accident has arisen out of employment, thus, dismissed the application. The same is assailed in the current appeal.

Heard Sri T.Vinod Kumar Tadakamalla, learned counsel for the appellants and Sri M.Jeevan Reddy, learned counsel for the respondents.

The Commissioner did not allow the application because he came to a conclusion that the death of the first applicant's son was not due to his employment and was an accidental death. The learned counsel for the appellants relied upon a judgement reported in the ***National Insurance Company Limited v. Siddappa and another***¹ and argued that the finding of the commissioner was wrong. In this case, the injury occurred when the applicant was boarding his employer's lorry another vehicle dashed against him leading to serious injuries. The facts in the present case are totally different.

The learned counsel for the appellants pointed out that the FIR and its contents marked in this case prove that the vehicle in question developed a problem and was stranded on

¹ ILR 2004 Karnataka 331= Manu/KA/0349/2003

the road. The driver left to Vijayawada to get a mechanic leaving the deceased behind with the stranded lorry. After the driver returned, he began searching for the deceased, who was not found. He, therefore, went to AW.1 and got him to the spot. After both of them started searching; they found the body of the deceased in a canal. These facts are from the statement of AW.1 as recorded by the police and marked as Ex.A.1. In the cross-examination also, as per the learned counsel, the witness AW.1 admitted the correctness of the contents of the FIR. Hence, he argued that the death was due to drowning in a canal and not due to or because of the employment.

This Court is of the view that the contents of the FIR etc., are clear. Only Exs.A.1 to A.3 were marked for the applicants. These documents do not establish that the death was due to the employment. The connection between the death and the employment is totally absent in this case. This Court is also of the opinion that the applicant did not prove this connection. The death in this case is an accidental death which is not connected to the employment.

Hence, this Court finds no merit in the appeal and the findings in the impugned order are correct.

The appeal is, therefore, dismissed. No order as to costs.

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

D.V.S.S. SOMAYAJULU, J

Date: 14.12.2017
KLP

