

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

+C.M.A.No.495 of 2007

% 14-12-2017

#Branch Manager,
Royal Sundaram Alliance Insurance Company,
Opp: R.T.C. Bus Stand, Ongole

... Appellant/
Respondent No.2

Vs.

Smt. Shaik Mastan Bi,
w/o. Khasim.
and 4 others.

... Respondents/
Applicants

! Counsel for the appellants: Sri N. Mohan Krishna

Counsel for the Respondents: T.S. Rayalu

< Gist:

> Head Note:

? Cases referred:

1. 2007 ACJ 1



HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**CMA No. 495 of 2007****JUDGMENT :**

This is an appeal filed against the order dated 17.04.2007 in WC.No.57 of 2005 passed by the Commissioner of Workmen's Compensation and Assistant Commissioner of Labour, Ongole.

The facts, in a brief, are that the applicants are the mother, wife and children of the deceased-driver, who died in an accident. The deceased who was aged about 29 years was employed as a driver on the lorry of the 1st respondent on monthly wages of Rs.4,000/-. On 13.09.2005, the deceased went on duty as per the instructions of the first respondent along with cleaner, that after going a distance, the deceased complained of chest pain, stopped the lorry got down from the lorry and he has vomited. The cleaner immediately took him to hospital at Martur on the motor cycle of a person going on the way; that on the way the deceased died. All the applicants are the dependents on the earnings of the deceased and they filed the application against the opposite parties 1 and 2, who are owner of the lorry and insurer of the lorry respectively for award of compensation of Rs.4,00,000/- for the death of the deceased due to accident arising out of and in the course of employment under the first respondent. In the counter filed, the first respondent admitted the

employment of the deceased and the death due to accident, but denied the wages paid to him. The second respondent filed a counter denying all the allegations made in the application. On behalf of the applicants, mother of the deceased was examined as AW.1 and the cleaner was examined as AW.2 and EXs.A.1 to A.8 documents were marked. For the opposite parties, RW.1 was examined. The second respondent has not examined any witness. After considering the documentary and oral evidence, the Commissioner for Workmen's Compensation passed the impugned order, wherein he directed payment of compensation of Rs.4,00,000/- by both the opposite parties Nos. 1 and 2 jointly and severally. Aggrieved by the said order, the present appeal is filed.

Heard Sri N.Mohan Krishna, learned counsel for the appellants and Sri T.S.Rayalu, learned counsel for the respondents.

The fundamental point urged by the learned counsel for the appellants is that the death of the workman is a natural death. He urged that the Commissioner mechanically awarded the compensation. He pointed out that even the claim petition is silent about the link between the death and the employment. He also pointed out that the accident occurred soon after the deceased started his work on that day and as such there were no aggravating circumstances also to link the death to the employment. He pointed out that the

case law filed before the Commissioner was simply overlooked.

In contrast, the learned Counsel for the respondents pointed out that the facts are clear and the death occurred after the deceased starting driving the lorry. Hence, as per him it is a clear case of death arising out of and in the course of employment. He urges that the order is a validly passed order, which has taken all the facts into consideration.

This Court, on examination of the pleadings; evidence and case law, notices the following:

(a) the application for compensation is absolutely silent about the connection between the death and employment. There is no pleading about the stress/strain of work or of any aggravating factors leading to the death.

(b) the evidence of AW.1 is also silent on these aspects. In her chief-examination, she states that the deceased left for work at 12 noon. The FIR and other documents show that the complaint was registered by 1.45 p.m stating that the incident occurred at 1.00 p.m.

(c) the second witness for appellant (the lorry cleaner) deposes in his chief-examination that the deceased was “fully healthy.”

(d) the first witness for respondent is the lorry owner (opposite party No.1), who states that the cleaner informed him within “15 minutes” of the start of work; that the deceased initially vomited and later died.

(e) the post-mortem report merely states that the deceased would “appear” to have died of ischemic disease.

(f) the judgement of the Hon’ble Supreme Court of India cited by the appellant in ***Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvalli & another***¹ was totally ignored by the Commissioner.

This Court is of the opinion that the link between the death and the employment has not been established at all. The case cited is a complete answer to the case in the lower Court, the relevant portion of which is excerpted hereunder:

“17. The deceased had admittedly suffered a massive heart attack. Nothing has been brought on record to show that the heart attack was caused while doing any job. Even according to employer, he at the relevant time was merely getting down from the vehicle.

18. The driver of the vehicle who was brother of the deceased was the best witness to state as to under what circumstances the deceased met with his death or whether the death was occurred due to some strain. He did not examine himself. The doctor who performed post mortem examination was also not examined.

¹ 2007 ACJ 1

26. In a case of this nature to prove that accident has taken place, factors which would have to be established, inter alia, are:

1. stress and strain arising during the course of employment
2. nature of employment
3. injury aggravated due to stress and strain. The deceased was traveling in a vehicle. The same by itself can not give rise to an inference that the job was strenuous.

27. Only because a person dies of heart attack, the same does not give rise to automatic presumption that the same was by way of accident. A person may be suffering from a heart disease although he may not be aware of the same. Medical opinion will be of relevance providing guidance to court in this behalf.

28. Circumstances must exist to establish that death was caused by reason of failure of heart was because of stress and strain of work. Stress and strain resulting in a sudden heart failure in a case of the present nature would not be presumed. No legal fiction therefore can be raised. As a person suffering from a heart disease may not be aware thereof, medical opinion therefore would be of relevance. Each case, therefore, has to be considered on its own fact and no hard and fast rule can be laid down therefor.”

This Court is of the opinion that none of the facts/factors highlighted in the said judgement are pleaded or proved in this case. The learned counsel relied upon a judgment of the High Court of Karnataka reported in

Divisional Controller v. Sangamma². This case also discusses that a connection between the death and employment must be there. Wear and tear of his employment may lead to the death as per this judgment. However, the factors referred to above which need to be established as per the decision of the Hon'ble Supreme Court are lacking in the present case.

Hence, this Court is of the opinion that the impugned judgment cannot stand the scrutiny of the law. It is, therefore, set aside in toto.

In the result, the Appeal is allowed without costs.

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

D.V.S.S. SOMAYAJULU, J

Date: 14.12.2017

KLP

Note: L.R.Copy marked.

² MANU/KA/0474/2004