

HON'BLE SRI JUSTICE N.BALAYOGI**CIVIL MISCELLANEOUS APPEAL No.657 OF 2009****JUDGMENT**

The appellant/opposite party, aggrieved by the orders dated 20.10.2006 in W.C. No.21/2005 of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar, awarding total compensation of Rs.2,56,829/-, to the respondents/applicants, preferred this appeal.

2. The brief facts of the case show that on 03.03.2005, while the deceased Md. Nizamuddin was working in the employment of the appellant, on the roof of the shed, at about 10 A.M., fell down from the roof and sustained injuries on the back side of his head. Immediately he was shifted to Government Hospital, Mahabubnagar. On the advice of the Doctors at Mahabubnagar Hospital, the deceased was shifted to Osmania General Hospital and while shifting to Osmania General Hospital, he succumbed to injuries.

3. The contention of the applicants is that the accident occurred in the course of employment with the opposite party. The deceased was 26 years old with good health and earning Rs.5,000/- per month towards wages and he is a skilled worker. Due to sudden death, the applicants, who are dependents of the deceased, lost their earning member.

4. Now the point arises for consideration is whether there is a privity of contract and employee and employer relationship between the appellant and deceased?

5. The learned counsel for the appellant contended that the appellant never engaged the deceased as a daily wage worker and there is no privity of contract and further there is no employer and employee relationship between the appellant and the deceased. The appellant's counsel further contended that even though AW-2 in the evidence, admitted that he took the contract with the appellant for removing the shed and engaged the deceased and other coolies for removing iron sheets, the Commissioner, erroneously awarded the compensation of Rs.2,57,843/- to the respondents. On the other hand, the respondents' counsel contended that the appellant is a Principal/employer, who engaged the deceased along with AW-2 and during the course of employment, the accident occurred. Therefore, the appellant is liable to compensate and the order of the Commissioner is legal and valid.

6. During the course of argument, the appellant did not dispute that the accident occurred on 03.03.2005. It is also not in dispute that the rate fixed to unskilled labourer is Rs.2,386/- per month as per rates fixed by the Commissioner of Labour, Andhra Pradesh, vide Proceedings No. Q1/16227/2004 dated 08.11.2004. The 1st applicant herself is examined as AW-I, whose evidence is that the applicant No. 2 and 3 are her daughters and deceased Md. Nizammudin is her son, who died under the employment of

opposite party on 03.03.2005, while working as coolie labour. Her further evidence is that on 03.03.2005, the deceased Md. Nizamuddin, along with three labourers were engaged by the Principal, Polytechnic College, Mahabubnagar for the purpose of removing of Tin shed on the old building @ Rs150/- per day. On 03.03.2005 at 10 A.M., while the deceased was working under the employment of opposite party, he fell down on the ground from the height of 30 feet and received grievous injury on the back side of the head. Immediately he was shifted to Government Hospital, Mahbubnagar. Later, on advice of doctors, the deceased was shifted to Osmania General Hospital, Hyderabad. While shifting, on the way, he succumbed to death.

7. AW-2 and AW-4 are workers, who are similarly engaged for removal of tin shed on the roof of Polytechnic College. AW-3 is the resident besides the Polytechnic College and AW-5 is an independent witness. The evidence of A-2 to A-5 consistently corroborate that on 03.03.2005 the deceased, AW-2 and AW-4 were engaged by the opposite party for removing of tin shed @ Rs.150/- per day. While so, when they are working under the employment of appellant, at about 10 A.M., Md. Nizamuddin fell down on the ground floor, sustained grievous injuries on the back side of the head. He was shifted to Government Hospital, Mahabubnagar. As per doctors' advice he was shifted to Osmania General Hospital, and while shifting, on the way, he succumbed to injuries. AW-3 and AW-5 are independent witnesses, who are neighbors to the Polytechnic College and their evidence also corroborates with AW-1, 2 and 4

that Md.Nizamuddin, while working on the roof of Polytechnic College, under the employment of appellant, fell down and sustained injury on the back side of head and while shifting to Osmania General Hospital, on the way, succumbed to injuries.

8. According to the contention of the appellant, there is no privity of contract in entrusting the work to one Mohd. Ali. The evidence of AW-4 is that he is a co-labourer of the deceased Md.Nizamuddin. On that day, they went to the Polytechnic College old building for the work of removal of tin shed, on coolie fixed by the Principal as Rs.150/- per day. During the cross-examination, AW-2 said that he has bargained with the Principal for the wages for removing the iron Shed. The petitioner also filed Ex.A1-First Information Report, Ex.A2- certified copy of Inquest report, Ex.A3- attested copy of PME report and Ex.A4- Attested copy of the final report submitted by the police. On perusal of Ex.A1, it is mentioned that the complainant is Mohd. Ali, who is examined as AW-2, wherein he clearly stated that he along with other workers i.e. deceased, AW-3 and AW-4 were engaged for removing of tin shed of the College and at about 10 A.M.,while removing the tin sheets, Md. Nizamuddin slipped and fell down from the building and sustained injuries. The Investigation Officer filed Ex.A4-Attested copy of the final report submitted by the police, stating that the deceased died due to hemorrhage and shock due to multiple injuries to head. Further stated that while the deceased, along with the other workers was removing the bolts of iron tins on the top of the roof, slipped and fell down and received head injury. The Inquest report (Ex.A2) opined that the deceased,

along with other coolies went to Polytechnic College for removal of tin sheets on the roof of the college. While so, at about 10 A.M., the deceased accidentally slipped and fell down and died. Ex.A3- attested copy of the final report submitted by the police opined that the cause of death is due to hemorrhage and shock and due to multiple injuries to head.

9. Against the evidence of AW-1 to AW-5, the evidence of RW-1, Sri K.Sudhakar, Principal, Polytechnical College, Mahabubnagar was also recorded. The evidence of RW-1 is that for removal of tin sheets he engaged one Mohd. Ali as a labourer on 02.03.2005. The work was entrusted to said Mohd. Ali but not to any other person. Except Mohd.Ali no other person was entrusted with the work. In fact, there is no agreement between the opposite party and the deceased and the work was entrusted to Mohd Ali for Rs. 300/- per day only. The Principal, RW-1 deposed that it is not known to him whether Mohd. Ali engaged the deceased Nizamuddin to the said work or not. In fact, there is no entrustment or engagement to the said deceased along with other outsiders. The college is nowhere concerned with the engagement of workers by Mohd. Ali. There is no relationship between the opposite party and the deceased as employer and labour. The Principal of the college has not engaged Md. Nizamuddin to do the work. There is no employer and employee relationship between the Principal and the deceased. During the cross examination, nothing was given in writing when the work was entrusted to Mohd. Ali. He has also not filed any document to prove that an agreement made with the Mohd. Ali for

Rs.300/- to get the work done. In view of the clear admission in the chief that he only engaged Mohd.Ali for removal of tin sheets for Rs.300/- on 02.03.2005, and in the absence of any agreement or document in proof of endorsement to one Mohd. Ali and the consistent evidence of AW-5 showing that the deceased was engaged as coolie for removal of tin sheets by Principal, the petition was allowed.

10. The consistent evidence of AW-1, AW-2, AW-4 and AW-5 show that on 03.03.2005, while the deceased was engaged in removing of tin sheet, slipped and fell down and sustained injuries on back side of the head and succumbed to injuries. The coolie was, as per evidence, Rs.150/- per day. But the Tribunal, basing on the rate fixed by the Commissioner of Labour vide proceedings Q1/16227/2004 dated 08.11.2004 fixed the rate as Rs.2,386/-, which is not disputed by the respondents.

The applicants who are the dependents of the deceased Nizamuddin, filed the petition, against the Principal / Appellant for the death of Nizamuddin. AW-2, Mohd. Ali himself presented Ex.A1 FIR wherein, he clearly deposed that he and his deceased and others AW-3, AW-4 were engaged as coolies for removal of tin sheets in the polytechnic college. In Ex A2 it is opined that Nizamuddin fell down from the roof of the Polytechnic College while he was on employment for removal of tin sheets from the appellant college and sustained head injury. The police also in the final report opined that the deceased was working along with others on the roof

of the building of the appellant and accidentally slipped and fell down and sustained head injury and while shifting to Osmania General Hospital, Hyderabad, succumbed to injuries. Oral evidence of AW-1, AW-2 and AW-3 and also documentary evidence of Ex.A1 to Ex.A4 well established that the deceased was in the employment of the appellant college for removing the sheets from the roof of the college building and met with the accident on 03.03.2005 at 10 A.M. and succumbed to injuries while shifting to Osmania General Hospital. The Appellant, RW-1, who is the Principal of the College, is responsible for the execution of the work as he is the employer of the coolies working in the premises. The appellant failed to establish that the work was entrusted to Mohd. Ali on contract and he has not engaged the deceased Nizamuddin and AW-2 and AW-4 and others. The Commissioner for Workmen Compensation and Assistant Commissioner for Labour, in the order, clearly stated that as per Section 12 of the Act Principal / employer is responsible, as the accident occurred within the premises of the employer. At the time of accident the deceased who was under the employment of the appellant and working in the process of removing of tin sheets, slipped and fell down and died. It is the essence of the evidence of record that the deceased was engaged by the college authorities itself and therefore, there is privity of contract for engaging the deceased by the appellate authorities and therefore, he is liable to pay compensation. The order impugned is legal and valid and does not suffer from any infirmity.

11. Therefore, the appeal is dismissed with costs by confirming the order dated 20.01.2006. It is brought to the notice by the respondents that amount was already deposited and lying in FDR. Therefore, the respondents are permitted to withdraw the compensation amount subject to appeal time.

12. As a sequel, the miscellaneous applications, if any pending, shall stand closed

N. BALAYOGI, J

12th December, 2017

JR

