

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

C.M.A.No.915 of 2007

JUDGMENT:

This appeal is filed by the insurance company against the orders dated 30.04.2007 passed by the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Tirupati in W.C.No.05 of 2005.

The applicants in the lower Court are the wife and children of the driver by name Vadivelu. The said driver, as per the averments of the claim petition was in the employment of the first opposite party and was driving a lorry bearing No.AP03-U-4255. The said lorry was insured with the second opposite party (present appellant). Stating that the deceased died during and in the course of employment, the claim petition has been filed claiming compensation of Rs.5,00,000/- for the death.

On behalf of the first opposite party, a counter was filed denying the accident, wages etc. The Second opposite party also filed a counter denying the claim petition and its contents. AW.1 is the first applicant, who is the wife of the deceased and she gave evidence and marked Exs.A.1 to A.8. AWs.2 & 3 are witnesses, who were examined in support of the applicants' case. RW.1, the owner of the vehicle in question deposed as a witness in this case. For the respondents, Exs.B.1 to B.3 were marked. The Commissioner after examining the evidence on record and hearing the

submissions came to the conclusion that compensation of Rs.3,19,240/-, besides the stamp duty is payable by opposite parties 1 & 2 along with the interest.

It is this finding that is questioned in the present appeal. Heard Sri C. Prakasah Reddy, learned counsel for the appellant/insurance company and Sri T.C. Krishnan, learned counsel for the respondents/applicants.

The first and foremost question that is to be decided and which was vehemently argued by the learned counsel for the appellant/insurance company is that the death was a natural death and not a death occurring due to the employment. In addition, the learned counsel also strongly stressed on the fact that on that particular date, the deceased was not actually driving the vehicle in question or nor was he in employment.

In response to this, the learned counsel for the respondents/applicants pointed out that the order passed by the lower Court is a reasoned order and as can be seen from the order, it is well thought out, reasoned and has considered all the issues raised. Therefore, he submits that there is no need to interfere with the order.

The first and foremost fact highlighted by the learned counsel for the appellant is that the first applicant's husband Vadivelu died near Bangalore in a place called Attiveli. On 15.12.2003 the first applicant's husband suffered a massive heart attack when he was Bangalore and he was

taken to a nearby hospital at Attiveli, where he was declared dead. Ex.A.3 is the certificate issued by the hospital at Attiveli certifying that the first applicant's husband died due to a cardiopulmonary arrest. The learned counsel strongly stresses on the fact that neither in the pleadings nor in the evidence is there anything to show that the death was caused due to the employment. Neither is there any pleading nor is there any evidence as per the learned counsel to support the theory that the death occurred due to the employment or due to the aggravating circumstances arising from the employment. In the absence of any pleading or evidence to show that the death occurred due to the employment, no liability can be fastened on to the appellant or to the owner of the vehicle.

The learned counsel for the appellant drew the attention of this Court to a judgment reported in ***Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and another***¹ which was also cited in the lower Court, wherein their Lordships of the Hon'ble Supreme Court clearly held that the crucial link between the death and the employment must be clearly established. As per him, this judgment of the Hon'ble Supreme Court and the other judgments on this subject, reiterate that the mere fact an employee suffered a heart attack and died will not lead to the conclusion that the

¹ 2007 AILD 37 SC

death occurred due to the employment although it may be in the course of employment.

In this case, there is no evidence to link the employment to the death. AW.1 is the first applicant who filed her evidence in chief in the form of affidavit. In her cross-examination, she admitted that her husband died due to heart attack in the course of his employment. She also agreed that her husband died at Bangalore. AW.2 was another witness who was examined to support the case of the applicants. She clearly admits in her cross-examination that she was not an eye-witness to the accident. AW.3 is another witness who was examined to prove the facts alleged by the first witness. He also admits that the deceased died at Attiveli in Bangalore. None of the witnesses examined for the applicants are, however, able to show why FIR was registered in Chittoor when the death occurred in Bangalore.

Exs.A.1 to A.4, according to the learned counsel for the appellant, are therefore not reliable and according to the counsel for the appellant, they were prepared with a view to lodge the present case. It is a fact that the death occurred in Bangalore. Even if Exs.A.1 to A.4 are read in seriatum, they will at best prove that the death occurred at Attiveli in Bangalore and that the death was due to heart attack as per Ex.A.3. Ex.A.4 post-mortem report is inconclusive and the final report on the cause of death is kept pending due to lack of visceral analysis.

The owner of the vehicle was examined as RW.1. He clearly stated in his evidence that his vehicle was not on hired on that particular date and he filed Ex.B.1, which is a tanker movement card issued by Heritage Food India Ltd. This is for the month of December, 2003 and according to this witness, this is issued by the Heritage Food India Limited and it bears the signatures of supervisor. The tanker number is mentioned in this document and it shows that on 15.12.2003 the vehicle in question was not used for the purpose of moving the cargo of Heritage Foods. Based on this, the owner as RW.1 deposed that the deceased did not die in the course of employment. He, however, admitted that if any liability is there, the second opposite party can pay the same.

It is the submission of the learned counsel for the appellant that this document can be relied upon as it is a contemporaneous document and the handwriting, ink etc. that are used clearly show that it was the document that was prepared at that point of time and is not fabricated.

This Court also feels that the examination of Ex.B.1 shows that it is a document that is contemporaneous and it can be relied upon. Merely because it is not signed, it cannot be rejected as the initials of the supervisors are there. This Court is any way of the opinion that the driver died of a cardiac arrest/heart attack. No evidence is forthcoming to show that there is the link between the employment and the

cause of the death. Unless it is established, no liability can be fastened on to the opposite parties. The judgments of the Hon'ble Supreme Court which are the law of land make it clear and do not give any scope for any other interpretation. The Commissioner for Workmen's Compensation totally ignored the law and passed the impugned order. The judgment of the Hon'ble Supreme Court is part and parcel of the file sent by him to this Court, yet he did not consider the implication of the same.

This Court is, therefore, of the opinion that the impugned order has to be set aside as it is contrary to law, facts of the case and the evidence on record. There is no evidence to establish the link between the death and the employment.

For all the above reasons, the appeal is allowed and the orders dated 30.04.2007 passed by the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Tirupati in W.C.No.05 of 2005 are hereby set aside. However, there shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 15.12.2017
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