

HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL MISCELLANEOUS APPEAL No. 1388 OF 2008

JUDGMENT:

1. The appellant-Insurance Company aggrieved by the order and Award dated 01.03.2008 passed in W.C.No.199 of 2005 by the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, at Kadapa in awarding the compensation of Rs.3,57,957/- with subsequent interest at 12% per annum from the date of accident, i.e. 25.04.2005 till the date of realization, preferred present appeal.

2. The claim of the first and second respondents/applicants in brief is that: the deceased Patan Chand Basha @ S.Chand Basha was working as Driver on the vehicle bearing No.AP.29T.1162 under the employment of third respondent and that the deceased met with an accident on 25.04.2005 and succumbed to injuries. It is their case that their deceased son, on the instructions of third respondent left Mydukur town for Mahanandi by driving Tata Sumo belonging to him on hire on 24.04.2005 and on the next day, at 8.00 A.M. and 10.00 AM he spoke with the third respondent over phone and later there is no information. However on 25.04.2005 he was found murdered by unknown persons in the said vehicle near Panyam police station limits.

3. The deceased was aged 22 years as on the date of death and earning Rs.5,000/- per month as wages. The said murder of the deceased was in the course of his employment.

4 Before the Commissioner, first respondent himself was examined as A.W.1 and got marked Exs.A.1 to A.7. No oral or documentary evidence was adduced on behalf of the appellant-Insurance Company and third respondent.

5. The contention of the appellant is that the deceased was not on employment at the time of accident (murder) and that there is no casual connection between the murder of deceased and employment. In support of his contention, he placed reliance on the decision of the Apex Court in EMPLOYEES' STATE INSURANCE CORPORATION Vs. FRANCIS DE COSTA (1996 ACJ 1281) wherein the injury was sustained while the lemployee was on his way to the factory where he was employed. The accident took place one Kilometer away from the place of employment. The Apex Court held that unless it can be said that his employment began as soon as he set out for the factory from his home, it cannot be said that the injury was caused by an accident 'arising out of his employment'. A road accident may happen anywhere at any time, but such accident cannot be said to have arisen out of employment, unless it can be shown that the employee was doing something *incidental to his employment*.

Unless an employee can establish that the injury was caused or had its origin in the employment, he cannot succeed in a claim based on Section 2(8) of the Act. The words 'accident arising out of his employment' indicate that any accident which occurred while going to the place of his employment or for the purpose of employment cannot be said to have arising out of his employment.

In the case on hand, the evidence of A.W.1 is that his son was working as driver under the third respondent on his vehicle-Tata Sum bearing No. AP 29T 1162. On 25.04.2005 at about 3.00 AM while he was on duty as driver of the said vehicle, he was murdered by some unknown persons.

6 The first respondent was examined as A.W.1, who is the father of the deceased. His clinching evidence is that his deceased son-Patan Chand Basha @S.Chand Basha was working as Driver under the third respondent on the vehicle-Tata Sumo bearing No. AP 29 T 1162 and on the date of accident, while the deceased was discharging duties as a driver, he was found murdered by some unknown culprits.

7 Ex.A.1 is the attested copy of FIR and Ex.A.2 is the certified copy of Inquest report. The evidence of A.W.1 goes to suggest that in Ex. A.1-FIR it was asserted that on 25.04.2005 the deceased was murdered within the limits of Panyam Police Station while discharging the duties as a driver for the Tata Sumo

No. AP 29.T.1162 belonging to third respondent. Ex. A.1-FIR supports the evidence of A.W.1. The Inquestdars under Ex.A.2 also opined that the deceased was murdered by some unknown culprits while discharging the duties as driver of the vehicle bearing No. AP 29 T 1162 belonging to the third respondent. P.W.1 also filed driving licence of the deceased which was marked as Ex.A.7 which shows that the deceased was possessing a valid and effective driving licence to drive the aforesaid vehicle.

8 Learned Counsel for the first and second respondents/applicants contends that the murder of the deceased in the vehicle was incidental to his employment as a driver. In support of his contention, he relied on the decision of the Apex Court in DAYA KISHAN JOSHI AND ANOTHER Vs. DYNEMECH SYSTEMS PVT LTD {2017(6) ALD 106 (SC)} wherein it was held as under:

“ The words ‘arising out of ‘ and ‘in the course of employment’ are in fact two different phrases and have been understood as such. If the accident had occurred on account of a risk which is an incident of employment, the claim shall succeed unless, of course, the workman had exposed himself to an added peril by his own imprudent act. The phrase ‘in the course of employment’ suggests that the injury must be caused during the currency of employment, whereas the expression ‘out of employment’ conveys the idea that there must be a causal connection between the employment and the injury caused to the workman as a result of the accident.”

In the case on hand, the deceased was a driver on Tata Sumo vehicle bearing No. AP 29T 1162. The third respondent employed him as a driver and entrusted the said vehicle. During the course of employment, on instructions of the third respondent, he gone to Mahanandi with the aforesaid vehicle as driver and on 25.4.2005 he was found murdered by some unknown persons in the limits of Panyam Police Station. which is clear that the said killing of the deceased was during the course of his employment while on duty.

9 Therefore the evidence of P.W.1 supported by documentary evidence at Exs.A.1 to A.7 well establish that at the time of death of the deceased on account of murder, the deceased was under the employment of the third respondent and died during the course of employment. No rebuttal evidence was produced by the Opposite Parties (Appellant-Insurance company and third respondent herein). Even the third respondent did not file counter or adduce any evidence before the Tribunal. Both oral and documentary evidence on record well establish that the deceased-Patan Chand Basha was the driver on Tata Sumo vehicle bearing No. AP.29T.1162, and he possessed valid and effective driving licence Ex.A.7 as on the date of his death and that policy No.603/2005 was in force as on the date of accident. By virtue of said policy, the appellant-Insurance Company is liable to indemnify the third respondent.

10. Absolutely there is no documentary evidence in proof of income of the deceased. In the absence of any material on record, the Commissioner has validly taken the minimum wages prescribed by the Government to the category of driver of light motor vehicle as on the date of accident i.e. at Rs.3,325.50 and age of the deceased as 26 years as mentioned in Driving licence-Ex.A.7, which is the basis for determination of compensation under the Workmen's Compensation Act. There is no rebuttal evidence and hence the Tribunal was right in considering the unimpeachable evidence of A.W.1 and documentary evidence at Exs.A.1 to A.7 and awarding the compensation of Rs.3,57,957/- with subsequent interest at 12% per annum from the date of accident i.e. 25.4.2005 till the date of realization, holding that the appellant-Insurance Company and third respondent are jointly and severally liable to pay the compensation. The Award of the Commissioner for Workmen's compensation is legal, valid and does not suffer from any legal infirmities.

11. For the foregoing discussion and in the result, the appeal is dismissed, with costs, confirming the award dated 01.03.2008 passed in W.C.No.199 of 2005 by the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, at Kadapa.

12. The first and second respondents/applicants are permitted to withdraw the compensation amount already deposited.

13. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 12th December, 2017.

Msnr_x

