

THE HON'BLE SRI JUSTICE N.BALAYOGI

C.M.A. No.960 of 2011

JUDGMENT :

The Appellant-Insurance Company aggrieved by the order dated 31.3.2010 made in W.C. No.20 of 2008 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nandyal, preferred this appeal contending besides other grounds on the grounds that there was no employer and employee relationship between the deceased workman and opposite party No.1 and the Commissioner failed to appreciate the evidence of R.W.1 where she stated that she does not know the name of the driver of the van or any salary was paid by her and the Commissioner completely relied on the statement of the mother of the deceased. It is further contended that the Commissioner in the absence of any post-mortem examination report came to the conclusion that the death was occurred due to accident which is erroneous and granting compensation of Rs.3,80,902/- against the claim of Rs.2,44,093/- is erroneous.

2. On the other hand, the counsel appearing for the 1st respondent/claimant contended that there is the evidence of R.W.1 herself admitting that the deceased was a driver working under her on the date of the accident and the insurance company is liable to pay the compensation, as the policy was in force as on the date of accident.

3. The claim of the 1st respondent/claimant is that Kader Basha, the deceased, was working as driver of LMV Van bearing No.AP 21 U 9711 under the Opposite Party No.1 in the trial court, who is the owner of the vehicle. Her son left Hyderabad at about 11 PM to reach Nandyal and at about 11.30 PM on 20.4.2006 right side rear wheel of the van was punctured in front of Annapurna Mess on NH 7, Shamshabad. The deceased parked the van on the side of NH 7 and while removing rear wheel of the said van, one lorry came with high speed on a rash and negligent manner from Hyderabad side and hit the deceased Kader Basha, due to darkness, they could not note down the registration number of the vehicle. Kader Basha succumbed to injuries while undergoing treatment in Osmania General Hospital. Further, he was 27 years old and working as a Driver and was being paid salary of Rs.3,800/- per month.
4. The Opposite Party No.1 filed counter admitting that she is the owner of the vehicle bearing No.AP 21 U 9711 and the driver deceased Kader Basha was having valid driving licence bearing No.DLFAP12128212004. The van was insured with the Opposite Party No.2 with policy No.710501/31/05/28689, which is valid from 23.9.2005 to 22.9.2006.
5. The 2nd respondent – Insurance Company filed the counter denying the averments of the petition and finally requested to dismiss the application.
6. The Commissioner, after discussing elaborately the evidence, awarded the compensation of Rs.3,80,902/- jointly and

severally against respondent Nos.1 and 2 and directed them to deposit the said amount along with interest at 12% from 21.4.2006 to the date of deposit within a period of thirty days from the date of the order by way of demand draft drawn in favour of Commissioner for Workmen's Compensation and Joint Commissioner of Labour, Kurnool.

7. Now the point that arose for determination is :

“whether the order of the Commissioner for Workmen's Compensation and Joint Commissioner of Labour is suffering from any legal infirmities warranting interference in the appeal.”

8. The learned counsel for the appellant contended that there is no employer and employee relationship between the driver and R.W.1 at the time of the accident and that R.W.1 in the evidence admitted that she does not know the name of the driver and she never paid him the salary, hence awarding compensation is illegal. On the other hand, the 1st respondent/claimant's contention is that the order is legal, valid and R.W.1 never denied relationship of employer and employee and payment of salary in her evidence. P.W.1 is the claimant Smt.Belgam Jaharbi, who is the mother of the deceased workman Kader Basha.

9. The evidence of P.W.1 clinches the issue that on 20.4.2006 at about 11.00 PM her son Kader Bash started the van bearing No.AP 21 U 9711 along with Venkateswarlu and his colleagues to reach Nandyal. At about 11.30 PM, the rear side wheel of the van was punctured in front of Annapurna Mess on NH 7, Shamshabad. As a result, Kader Bash, who is the driver of the said van, stopped the van by the side of the road

and while removing the rear wheel, one lorry came with a high speed in a rash and negligent manner from Hyderabad side and hit Kader Bash and two others. Due to darkness, they have not note down the registration number of the vehicle at about 12.30 midnight on 20/21-4-2006. Her son succumbed to injuries while undergoing treatment at 4.25 AM on 21.4.2006. To substantiate her claim, she filed Ex.A1 – certified copy of F.I.R., Ex.A2 – certified copy of inquest report. In the Ex.A1 there is specific assertion that while the deceased was removing the rear side wheel which was punctured, in the meanwhile in the mid night of 20/21.4.2006 an unknown driver drove his lorry with high speed in a rash and negligent manner coming from Hyderabad side on N.H.7, approached opposite to Annapurna Hotel, gave a dash to van bearing No.AP 21 U 9711 from rear side which is stationed besides the road due to which Kader Bash received bleeding injuries and expired while undergoing treatment in Osmania General Hospital, Hyderabad. The inquestdars under Ex.A2 inquest report opined that due to injuries sustained in the accident Kader Basha died and he was present near the van AP 21 U 9711 and while removing rear wheel, which was punctured, an unknown lorry dashed behind the said vehicle resulting Kader Basha sustaining injuries. The petitioner also filed driving licence of the deceased, according to which he possessed LMV driving licence non-transport which is valid as on the date of accident. The van AP 21 U 9711 is a light motor vehicle and the deceased possessed valid and effective driving licence at the time of accident.

10. Against the evidence of P.W.1, there is the evidence of R.W.1 – the owner of the van on which the deceased was the driver. The consistent evidence of R.W.1 is that she is the owner of the vehicle and the deceased was driver of her van bearing No.AP 21 U 9711 which has valid policy bearing No.710501/31/05/28689. Ex.A5 driving licence is also stated in the evidence of R.W.1. During course of cross-examination, R.W.1 clarified that the van bearing No.AP 21 U 9711 is insured with the appellant-Insurance Company. The policy was in force. The deceased Kader Basha was on duty as on the date of accident as a driver who possessed valid and effective driving licence and the Insurance Company is liable to pay the compensation.

11. The Commissioner elaborately discussed the evidence of P.W.1 and R.W.1 and the documentary evidence Exs.A1 to A5 and came to the conclusion that the driver Kader Bash was under employment of R.W.1 in her van bearing No.AP 21 U 9711 which met with an accident at 0.30 AM on 21.4.2006 at Shamshabad and while undergoing treatment in Osmania General Hospital, he succumbed to injuries at 4.25 AM on 21.4.2006. The said vehicle was insured with the appellant/Opposite Party No.2. Ex.A1 – F.I.R. supported by the evidence of P.W.1 is that an unknown lorry hit on backside of the van bearing No.AP 21 U 9711 on which the deceased was a driver and at the time of the accident, he was on the employment under R.W.1. Due to darkness, the lorry number was not noted. Ex.A2 established that due to injuries sustained in the accident, Kader Basha - driver of the van succumbed to injuries and there is direct nexus between the accident and death. Ex.A5 supports that the

deceased - driver possessed the valid and effective driving licence at the time of accident. There is no negligence on the part of the deceased and the driver of unknown lorry came with high speed in a rash and negligent manner, dashed on the back of the van while the deceased was removing the rear side punctured tyre. The evidence of R.W.1 corroborating with P.W.1 established that R.W.1 is the owner and deceased is the driver on the van bearing No.AP 21 U 9711. Further, Kader Bash died during the course of employment with R.W.1. Ex.A2 established that Kader Basha died due to multiple injuries caused in the accident. Accordingly, I find that the conclusions arrived at by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour that Kader Basha is the driver on the van bearing No.AP 21 U 9711 and during the course of employment on 21.4.2006 at 0.30 AM, he was involved in the accident and due to multiple injuries succumbed to injuries at 4.25 AM on 21.4.2006.

12. Ex.A5 - the original driving licence shows that deceased Kader Basha born on 12.8.79 and accordingly he was 27 years old. The evidence of P.W.1 supported with Ex.A5 established that the deceased born on 12.8.79 and was 27 years old by the date of the accident. It is the evidence of P.W.1 that the deceased was drawing a salary of Rs.3,800/- per month, but no proof is filed. Nothing was elicited from R.W.1 about the salary. Hence, the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour applied minimum wages fixed in G.O.Ms.No.81, L.E.T. & F. (Lab-II) Dept., Dated 2.12.2000 and fixed the basic pay at Rs.2,370/- +1,197 towards C.L.A. and total salary was

arrived at Rs.3,567/- per month. Accordingly, awarded compensation of Rs.3,80,902/-, which is legal, valid and do not warrant any interference. The findings of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour in awarding the compensation are legal, valid and do not suffer from any legal infirmities warranting interference.

13. Hence, C.M.A. is dismissed with costs while confirming the order dated 31.3.2010 made in W.C. No.20 of 2008 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nandyal.

14. It is brought to the notice that the entire amount was deposited at the time of filing the appeal. In case the amount is lying to the credit of W.C.No.20 of 2008, the petitioner is permitted to withdraw the same.

15. Advocate fee is fixed at Rs.2,000/-.

16. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

29th December, 2017

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