

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.2153 OF 2004

JUDGMENT:

This appeal, under Section 30 of the Workmen's Compensation Act, 1923 (for short, "the Act") is filed by the appellant/Andhra Pradesh State Road Transport Corporation, aggrieved by the grant of compensation of Rs.4,48,891/- to the respondents/claimants, by the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Adilabad *vide* order, dated 09.04.2003, passed in W.C.No.5 of 2001.

2. Heard the submissions of the learned Standing Counsel appearing for the A.P.S.R.T.C. representing the appellant and the learned counsel for the respondents/claimants, and perused the material on record.

3. Learned Standing Counsel for the appellant/A.P.S.R.T.C. would contend that the subject claim petition before the Court below was filed with a delay of three years; that as per Section 10 of the Act, a claim petition in the event of death has to be filed within two years from the date of the death of the deceased and therefore, the subject claim is barred by limitation; that the deceased in this case by name Md.Akthat Ali died due to heart attack and there was no stress, strain or any circumstances that resulted in his death, however, the Court below held that the subject death is in the course of employment and awarded a compensation of Rs.4,48,891/-, which is erroneous. He also relied on a decision reported in **Divisional Manager, New India**

Assurance Co. Ltd., vs. Alahari Varalaxmi and others¹ and ultimately, prayed to set aside the impugned order.

4. In spite of service of notice and the matter being posted under the caption “For Orders” today, there is no representation on behalf of the respondents/claimants. In view of the submissions made by the learned Standing Counsel for the appellant, the following points come up for determination:

“1. Whether the claim of the respondents/claimants is time barred? and

2. Whether the order, dated 09.04.2003, passed in W.C.No.5 of 2001 by the learned Commissioner for Workmen’s Compensation and Assistant Commissioner of Labour, Adilabad is liable to be set aside?”

5. **POINT Nos.1 & 2:-**

Admittedly, the death of the deceased Md.Akthat Ali occurred on 20.10.1996 during working hours as a service Driver. The application for compensation was filed before the Court below in the year 2001. Section 10 of the Act reads as under:-

“10 Notice and claim. —

(1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or, in case of death within two years from the date of death:

Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was

¹ 2009 Law Suit (AP) 534

continuously absent from work in consequence of the disablement caused by the disease:

[Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work, the period of two years shall be counted from the day the workman gives notice of the disablement to his employer:

Provided further that if a workman who, having been employed in an employment for a continuous period, specified under sub-section (2) of Section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:]

[Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the [entertainment of a claim]—

(a) if the claim is preferred in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred:]

Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of

the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

[(3) The State Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or where a notice-book is maintained, by entry in the notice-book.]

10A. Power to require from employers statements regarding fatal accidents:—

(1) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

10-B. Reports of fatal accidents and serious bodily injuries:-

(1) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death [or serious bodily injury], the person required to give the notice shall, within seven days of the death [or serious bodily

injury], send a report to the Commissioner giving the circumstances attending the death [or serious bodily injury]:

Provided that where the State Government has so prescribed the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice.”

A claim petition is required to be filed within two years from the date of death of the deceased. In the present case, the claim petition is filed with a delay of about three years. The Court below had not dealt with that aspect. Therefore, the very entertainment of the application for grant of compensation by the Court below is bad in law.

6. Further, it is apt to refer the decision referred in **Divisional Manager, New India Assurance Co. Ltd., (1 referred supra)** wherein the appeal filed by the Divisional Manager, New India Assurance Company challenging the order of the Commissioner for Workmen's Compensation for awarding compensation to the legal heirs of the deceased workman was allowed. In para Nos.14 and 15 of the said judgment, this Court was pleased to record a finding as mentioned herein:

“From the three judgments referred to hereinabove, when a workman dies of heart attack or chest pain, the claimants have to plead and establish by acceptable evidence that employment related stress and strain had triggered or aggravated the heart attack. If the workman had history of heart disease earlier or was made to work beyond prescribed standards with regard to time and quantity of work there could be relationship between employment and stress but it has to be proved by producing cogent and convincing evidence. Mere allegation that workman suffered stress and strain which resulted in heart attack would not be sufficient. The nature of employment, the duties performed by the workman, the duty hours, the onerous nature of the job, etc., are all factors which

need to be considered by the Commissioner for Workmen's Compensation. On a mere allegation that the workman died of heart attack due to stress and strain or the long hours of employment would not be sufficient. In this case as noticed supra, no evidence was let in by the claimants and, therefore, the appeal must succeed.

The civil miscellaneous appeal is accordingly allowed. If any amount is paid to claimants, it shall not be recovered from them and it shall be open to the insurer to recover the same from the owner of lorry. No costs."

The respondents/claimants got marked number of documents on their behalf. Ex.A-1 is the Death Notification issued by the Depot Manager, Asifabad, dated 02.12.1996. Ex.A-2 is the Order of Regularisation of service of the deceased, dated 03.09.1994, of the Depot Manager, Asifabad Depot. Ex.A-3 is the Death Certificate issued by the Mandal Revenue Officer, Rebbena, Adilabad District, dated 08.11.1996, bearing No.D/2048/96. Ex.A-4 is the pay slip of the deceased issued for the month of August, 1996. Ex.A-5 is the xerox copy of the death intimation of the deceased. Ex.A-6 is the xerox copy of the letter issued by private Doctor, dated 21.06.1996. Ex.A-7 is page No.8 of Daily newspaper of Andhra Prabha, dated 24.10.1996. Ex.A-8 is the postal acknowledgment signed by the Depot Manager, Asifabad. Ex.A-9 is the legal notice copy, dated 01.08.2001, issued to the respondents. There is evidence of P.W.1 i.e., wife of the deceased. Except that, there is no other evidence. In that evidence, there is no mention that the deceased underwent stress and strain in the course of his employment and his ailment was aggravated due to the service conditions. Merely because the workman died due to heart attack or chest pain, it cannot be held that the subject death resulted in the course of employment. The claimants have to plead and

establish by leading cogent and convincing evidence that the employment resulted in stress and strain and had triggered or aggravated the health conditions of the deceased and as a result of that, he succumbed to the stress and strain. There is no evidence that the deceased had got any history of heart disease and made to work beyond the prescribed standard working hours. Mere allegation that the deceased suffered stress and strain in the course of his employment and it resulted in his heart failure is not sufficient to claim the compensation. The learned Commissioner, without considering these aspects, was pleased to hold that the death of the deceased resulted in the course of employment and assessed and awarded the abovementioned compensation, which is unsustainable in law. The facts of the instant case and the decision referred supra are similar. Therefore, the order, dated 09.04.2003, passed in W.C.No.5 of 2001 by the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Adilabad is liable to be set aside.

7. In the result, the appeal is allowed setting aside the order, dated 09.04.2003, passed in W.C.No.5 of 2001 by the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Adilabad. There shall be no order as to costs.

8. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 18.07.2018
AMD

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