

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

C.M.A.No.808 of 2006

JUDGMENT:

This Civil Miscellaneous Appeal is filed against the order dated 14.06.2006 passed in W.C.No.26 of 2003 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle I, Ranga Reddy District, Hyderabad.

2. The applicants are the dependents of one late Eknath Kambli. Their case is that the deceased Eknath Kambli was working as a cleaner on the water tanker bearing No.AP28U-4559. He sustained grievous injuries on 22.03.2003 and died thereafter. Stating that the injury arose out of and during the course of employment, the parents and siblings filed the claim application against OP1/owner of the tanker and the insurer/OP2. OPs 1 & 2 strongly resisted the claim application filed and opposed the same. After the pleadings were completed, AW.1 & PW.2 were examined for the applicants and Exs.A.1 to A.7 were marked. On behalf of the opposite parties, RWs.1 & 2 were examined and Ex.R.1 (OP1) and Ex.B.1 (OP2) were marked.

3. The lower Court after considering the evidence gave an award in favour of the applicants and against the respondents. This order is impugned in the present appeal by the insurance company/OP-2.

4. This Court has heard the learned counsel for all the appearing parties.

5. The submission of the learned counsel for the appellant/OP2 is that the lorry in question was given under hire to a third party, Vishnu Transport and that the said Vishnu Transport alone engaged the services of the deceased. Therefore, they stated that there is no employer and employee relationship between the deceased and OP1 and consequently, OP2 cannot be held to be liable. The contention of the learned counsel for the appellant is that in the absence of proof of employer and employee relationship, the case itself is not maintainable particularly for the workmen compensation. The learned counsel submitted that as the lorry was on lease to a third party, the insurance company is absolved from its all liability, as the said third party is not the insured. On the other hand, the learned counsel for the respondents submits that all the issues were considered and negatived in the lower court and therefore, he argued that the impugned order must be sustained.

6. An examination of the pleadings shows that after receipt of the application, OP1 filed a counter wherein they denied employer and employee relationship, but they did not state that the vehicle in question is 'leased to Vishnu Transport'. The counter is absolutely silent about this. Similarly, the counter filed by OP2 also does not show that the vehicle was leased to a third party and that therefore,

they are absolved. There is a general denial of the age, employer and employee relationship etc. But, neither OP1 nor OP2 have raised this issue about the deceased being employed by a third party and or of the third party being the employer of the deceased. The insurance policy which is marked as Exs.B.1 and R.1 is admittedly in the name of the OP1 alone. Only in the evidence of OP1's witness, it is alleged that the vehicle in question was given on lease to Vishnu Transport. In the chief examination he states that the driver and other employees are engaged by the said Vishnu Transport which would submit bills on monthly basis which would then be paid by OP1. In the cross-examination, he admits that the insurance is still in the name of the company. Interestingly, the learned counsel for OP2 (present appellant) extensively cross-examined this witness and elicited that it is not stated anywhere in the counter that the vehicle was leased to Vishnu Transport. He also elicited that it is not stated anywhere that Vishnu Transport supplied the water to OP1. The witness finally admits that there is no documentary proof to show that the vehicle was leased to Vishnu Transport. The learned counsel appearing for the respondents pointed out that in view of the answers elicited by OP2 in the cross-examination, they cannot now argue that they are absolved from liability.

7. The learned counsel for the applicants/current respondents also drew the attention of this Court to the

evidence of DW.1-Sri Y. Sudhakar, who is the Divisional Manager of the present appellant/insurance company. In the cross-examination, it is clearly elicited that the insurance company had received the inquest report, FIR etc., wherein it is shown that the deceased was working as a cleaner on the tanker. It is also elicited that there is no dispute about the fact that the insurance policy is valid on the date of the accident. It is also elicited in the cross-examination of this witness that the company had employed Dr.G.N.K. Reddy as investigator and that they obtained necessary information regarding the deceased employee. It is further admitted by PW.2 who is very Senior Officer (Divisional Manager) that OP2 is liable to pay the compensation.

8. The learned counsel for the applicants/current respondents argued that a reading of the evidence of both witnesses makes it clear that a) there is no pleading about the lease of the vehicle to Vishnu Transport; b) in the absence of pleading, no evidence can be looked into about the alleged lease; c) even if the evidence is looked into, it is clear that there is no documentary evidence to prove the lease; d) OP1's witness states that the bills were given by the Vishnu Transport for payment but no such bills etc. are also filed; and e) if one company leases a vehicle to another, there should be documentary proof available. Since it is not filed; an adverse inference must be drawn. Therefore, the learned counsel argued that OPs.1 & 2 cannot argue that there was a

lease of the vehicle. He pointed out that the insurance company is in the name of OP1 only. This Court agrees with the submissions made by the learned counsel. The theory of lease crops up only in the oral evidence of OP1. But, it is not supported by pleadings or any other documentary evidence. Therefore, in the opinion of this Court the theory of lease was rightly discarded by the lower Court.

9. The learned counsel for the appellant also argued about the lack of employer and employee relationship. But, their own witness admits that they have connected all necessary papers like FIR, inquest report etc. which state that the deceased was employed as a cleaner on the tanker. They did not do anything to contradict the contents of these documents nor did they file any document to contradict the same. Therefore, this Court also agrees with the findings of the lower Court on this issue.

10. The learned counsel for the appellant also argued that Clause-17 of the IMT applies to the facts of the present case and therefore, the cleaner is not covered. On the other hand, it is the submission of the learned counsel for the respondents that as per the decision of the Hon'ble Supreme Court of India in the case reported in ***Hanumanagouda v. United India Insurance Co. Ltd.***¹ that even a clerical cadre employee (gumastha) is covered by the policy and that therefore, the contention of the learned counsel is not correct.

¹ 2014 (9) SCC 341

The deceased as per the evidence available was an employee and so he is covered. This Court also agrees with the finding of the lower Court on this issue and holds that the policy in question will cover the deceased.

11. For all the above reasons, this Court holds that the order of the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Circle-I, Ranga Reddy District, Hyderabad dated 14.06.2006 passed in W.C.No.26 of 2003 is correct and the same is confirmed in all respects. The appeal is, therefore, dismissed. However, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

Date: 15.02.2018
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D.V.S.S. SOMAYAJULU, J

