

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

CIVIL MISCELLANEOUS APPEAL No.62 OF 2007

JUDGMENT:

This is an appeal filed against the order dated 30.07.2005 in W.C.No.25 of 2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ongole.

The case of the appellants is that Sri Subash Chandra Bose worked as a driver of the lorry belonging to O.P.No.1, which is insured with O.P.No.2. The case in the lower Court is that he was on duty on 10.05.2002 when he died due to heart attack which they say is the course of employment.

O.P.No.1 and the insurance company appeared in the case. While O.P.No.1 supported the case of the appellant, O.P.No.2 denied the entire case that was filed before the Commissioner for Workmen's compensation. Therefore, the matter was posted for hearing.

On behalf of the applicants, 1st applicant was examined as A.W.1 and no documents were marked. On behalf of the respondents, O.P.No.1 was examined as R.W.1 and Exs.R1 and R2 were marked.

The lower Court, after going through the evidence came to the conclusion that the cause of death during the course of employment was not proved. Therefore, the lower Court dismissed the application by its order dated 30.07.2005. The said order is now impugned in the present appeal.

Heard learned counsel for the appellants and for the 2nd respondent.

A perusal of the record shows that the 1st applicant was examined as A.W.1. As noticed by the lower Court, she did not throw any light on the cause of death by producing necessary documents like police report, FIR, inquest report and postmortem report.

It is the submission of the learned counsel for the applicants that due to poverty, the applicants did not give a police report nor did they get a postmortem done.

On the other hand, it is the contention of learned counsel for the respondent that whenever there is a death due to any unnatural causes, inquest has to be conducted as per the relevant provisions of Cr.P.C. It is also his contention that unless there is a postmortem report and the evidence of a doctor to establish the cause of death, it cannot be presumed that the death arose out of or in the course of employment.

As rightly noticed by the lower Court, A.W.1 was not in a position to depose about the cause of death. There is no positive evidence to show as to how and when the deceased died. It is also noticed by the lower Court that the deceased reached Kadapa after travelling from Singarayakonda on 10.05.2002. The vehicle was stationed there from 10.05.2002 to 13.05.2002 when the death occurred. As rightly pointed out by the learned counsel for the respondent, connection between the employment and the death should be established. Learned counsel also pointed out that as per the decision of the Hon'ble Supreme Court in ***Shakuntala chandrakant Shreshti v. Prabhakar Maruti Garvali and another***¹, there should be a connection between the cause of

¹ (2008)1 SCC (L&S) 964

death and the actual death. If the death was due to any aggravating circumstances arising out of or in the course of employment, the same should also be proved.

This Court finds substantial force in the contention of the learned counsel for the respondent. There is evidence on record to show that from 10.05.2002 to 13.05.2002, the 1st applicant's husband was not under any stress or strain. Learned counsel for the respondent also pointed out that Exs.R1 and R2, which are the statements given to the investigator from the insurance company, were taken on record. These statements show that the deceased was idle and was not doing any duty from 10.05.2002 to 13.05.2002. Ex.R1 clearly discloses that the deceased was on duty on 09.05.2002 and that the death occurred on 13.05.2002.

As correctly noticed by the Commissioner for Workmen's compensation, the presence of the minor son along with the deceased is not in consonance of the theory that he was actually working on that day. No explanation was given why the minor son accompanied the father on his duty from Singarayakonda to Kadapa. Even, Ch.Ramarao, who is examined as R.W.1, clearly stated that the deceased was on duty on 09.05.2002 and 10.05.2002 and that he actually died on 13.05.2002. It is also in the statement that because the lorry could not be unloaded, he was waiting for the same.

This Court, therefore, finds that there is no evidence to establish that the death occurred due to any stress or strain of the employment. Unless and until it is proved that the death occurred due to the factors arising from the employment or due to the stress or strain of the employment, this Court cannot come to conclusion

that the death occurred due to and in the course of employment. The evidence in this case is not at all supportive of a case of death arising out of and in the course of employment. This Court also finds that the order of the lower Court is a well reasoned order. The lower Court had considered the available evidence and had rightly come to the conclusion that the applicants did not prove the case of a death arising out of and in the course of employment. The absence of any documentary or other evidence was rightly noticed by the lower Court. No grounds are made out to interfere with the said findings.

For all the above reasons, the appeal is dismissed. No costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

Date : 22.01.2018
ssp

D.V.S.S.SOMAYAJULU, J

