

HONOURABLE SRI JUSTICE N.BALAYOGI

CIVIL MISCELLANEOUS APPEAL No.467 of 2009

JUDGMENT

The appellant – the Chief Engineer, Operations & Maintenance, KTPS, preferred this appeal, aggrieved by the order dated 28.06.2007 in W.C.No.5 of 2006, whereby the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Khammam (herein after called Commissioner), allowed the aforesaid W.C., awarding compensation of Rs. 3,58,205/- and directed the opposite party herein to pay the said amount, solely within thirty days from the date of receipt of order, failing which the applicant is entitled for interest @ 12% per annum on the amount of compensation from the date of filing of the application till the date of payment and also directed to deposit the said compensation amount by way of Demand Draft obtained in the name of the Commissioner for Workmen's Compensation, Warangal and send it to the Dy. Commissioner of Labour, Warangal within 30 days from the date of receipt of the orders.

2. This appeal is also preferred on the ground that the accident was not occurred during the course of employment and the Commissioner, erred in holding that the death was due to accident in the factory.

3. The claim of the respondent / applicant is that on 06.03.2004, one Manda Venkaiah, who was working as Mazdoor in KTPS, attended II Shift in the Plant of the Opposite Party and while he was performing his duty at MCP "B" Station

around 13.30 hours, boarded upon the dozer in the plant to fill water in the radiator and when he was filling water, accidentally, slipped and fell down in between the Dozer and Blade on the rods. As a result, the deceased sustained grievous injuries over his head, kidneys and lungs and immediately he was shifted to KTPS Hospital, where he was given first aid and noticing his health condition found to be precarious, while he was shifted to a specialist, he died on the way to the hospital. The deceased aged of 42 years and getting a salary of Rs.7,153 per month. The appellant gave a deaf ear for the frequent request of payment of compensation.

4. The appellant filed a counter, admitting that the deceased was employee in the appellant company, whereas he denied that the deceased died due to damage of liver and right kidney. So he is not liable to pay compensation and further contended that the accident occurred due to the consumption of alcohol by the deceased.

5. The wife of the deceased – Manda Badramma, who examined as P.W.1, stated that her deceased husband was working under the employment of Opposite Party as Mazdoor and drawing a monthly salary of Rs. 7,153/-. She further stated that on the date of accident her deceased husband Manda Venkaiah, who was working as Mazdoor in KTPS, attended II shift of opposite party and while he was performing his duty at MCP 'B' Station around 13.30 hours, boarded upon the dozer in the plant to fill water in the radiator and when he was filling

water, accidentally slipped and fell down in between the Dozer and Blade on the rods.

6. Basing on the rival pleadings, the learned Commissioner framed the following issues for settlement:

1. Whether the deceased Manda Venkaiah was employed as Mazdoor by the opposite party on the date of accident ?
2. Whether the alleged accident took place out of and in the course of employment with the Opposite Party?
3. If so, to what extent of relief the dependants of the deceased are entitled to ?

7. In order to prove the respective claims, the respondent/applicant is examined as P.W.1 and got marked Exs.A.1 to A.7. On behalf of the opposite party one S. Radha Krishna Murthy, Chief Engineer, O & M/KTPSN, Paloncha was examined as R.W.1 and Ex.R.1-Notice from CWC & ACL Khammam and Ex.R.2- Reply letter was got marked on their behalf.

8. Now the point for determination is whether the order of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Khammam suffers any illegality.

9. The specific contention of the appellant / opposite party is that the applicant slipped and fell down while he was under the influence of alcohol and whereas the respondent / applicant contended that the deceased fell down while filling water in radiator, between the dozer and blade on the rods and sustained grievous injuries in Kidneys and lungs.

10. The Wife of the deceased was examined as P.W.1. In her cross examination she deposed that her husband was employed by the appellant as Masdoor and drawn monthly salary of Rs.7,153 on 06.03.2004. While the deceased Venkaiah in the capacity of Musdoor in KTPS, attended II shift of Opposite Party and while he was performing his duty at MCP'B' Station around 1330 hours, boarded upon the dozer in the plant to fill water in the radiator and when he was filling water, accidentally slipped and fell down in between the dozer and blade on the rods. As a result, the deceased sustained grievous injuries over his head, kidneys and lungs and immediately he was shifted to KTPS Hospital, where he was given first aid and noticing his health condition found to be precarious, while he was shifted to a Specialist, he died on the way to hospital. It is specifically stated that her husband was not under drunken condition at the time of accident.

11. On behalf of the appellant, one S.Radha Krishna Murthy, Chief Engineer, O & M / KTP, Paloncha was examined himself as RW1, wherein he stated that the cause of death of deceased was due to influence of alcohol and also due to failure of liver and kidney. The accident occurred only due to influence of alcohol consumed by the deceased Manda Venkaiah.

12. In these circumstances, the evidence of P.W.1 and R.W.1 clearly goes to suggest that there is 'employer' and 'employee' relationship between the deceased M.Venkaiah and the appellant, which is not in dispute. It is also admitted fact that while filling water in the radiator, he slipped and fell down

between the Dozer and Blade on the rods, sustaining grievous injuries to the head, liver and kidneys and succumbed to injury on the way to hospital. The accident occurred in the course of employment.

13. From the documentary evidence of Ex.A.1 – a complaint copy in P.S. Paloncha Town and Ex.A-2 - a copy of FIR and oral evidence of P.W.1, it clearly goes to show that on 06.03.2004 at 1.30 hours, while the deceased Venkaiah while filling water in the Dozer, he slipped and fell down in between the Dozer and Blade on the rods and sustained severe injuries and at the time he was under the employment of the appellant / opposite party. Under Ex.A.3 Panchanama (Inquest Report), it is clearly mentioned that on 06.03.2004 at 1.30 hrs., while filling water in the Dozer, he slipped accidentally and sustained grievous injuries to the head, liver, kidneys and due to severe injuries he died. From the documentary evidence marked as Ex.A4 – P.M.E. report and Ex.A5 – Report of Death, the Doctor, who conducted the PME, opined that death was due to rupture of right side of liver and damage of right side of kidney and ultimately opined that the death was due to damage to liver and right kidney.

14. In view of the above facts and circumstances, I am of the considered view that the Commissioner, after elaborate discussions and going through the oral documentary evidence, came to the right conclusion that the accident occurred out of and in the course of employment. There is no oral or documentary evidence establish that at the time of accident the deceased was consumed alcohol and even in Ex.A.4 – P.M.E.

Report, it is silent with regard to alcohol contents. In such circumstances, the Commissioner rightly held that the death was not occurred on consuming the alcohol by the deceased at the time of accident.

15. With regard to the age of the deceased, as per the documentary evidence of Ex.A.4 – P.M.E. Report, he was aged about 42 years as on the date of accident and death. During the cross examination of the R.W.1 – S.Radha Krishna Murthy, Chief Engineer, O & M / KTPS, Paloncha, stated that the deceased was employee with the appellant and the deceased was drawing Rs.7,000/- approx. per month. R.W.1 also stated that the accident was intimated to the Deputy Commissioner of Labour, Warangal and they have received a direction from the Assistant Commissioner of Labour on 02.06.2004 to submit a statement in the clear form within 30 days and the then Chief Engineer has replied to the direction vide his letter No.158/2004 dated 15.08.2004, duly explaining the reasons for non depositing of the compensation amount which were marked as Ex.R1 and R2. From the above facts and admission of R.W.1 it clearly shows that the accident was intimated to the Deputy Commissioner of Labour, Warangal and Assistant Commissioner of labour under Ex.R.1 dated 02.06.2004 to the Chief Engineer and directed to submit a statement within 30 days and the Chief Engineer gave reply which was marked as Ex.R2

16. It is the clear evidence of A.W.1 that age of the deceased was 42 years as on the date of accident and he was drawing Rs.7,153/- per month towards salary. After his death, P.W.1 –

wife of the deceased approached the appellant many times, requesting for compensation. But they have not paid.

17. The Commissioner, having considered the evidence of P.W.1 and admission of R.W.1, came to the conclusion that the deceased was aged about 42 years as on the date of the accident as per Ex.A.4. He also considered that though the applicant has claimed the wages of the deceased as Rs. 7,153/- per month, he hold that the deceased was paid Rs.4,000/- per month maximum for calculation purpose as per amendment Act 46 of Workmen's Compensation Act, w.e.f. 08.08.2000. The Commissioner keeping in view of 42 years as age of the deceased as per Ex.A5 of the relevant age factor 178.49, and wage Rs.4,000/- per month, in this case, the compensation payable to the respondent/applicant comes to Rs.3,56,980/- under section 4(i)(b) of the Act. Advocate Fee of Rs.500/- and Court Fee of Rs. 725/- totaling a sum of Rs.3,58,205/- shall be paid towards compensation to the respondent / applicant. The Commissioner further hold that the Opposite Party solely liable to pay interest @ 12% per annum under 4(A)(3) of the Amended Act 30.08.1995 on the compensation awarded above, excluding on advocate's fee and Court fee. The interest shall be calculated after 30 days of filing of application to till the date of payment.

18. In view of the above discussions, I am of the considered view that there is a employee and employer relationship between the appellant/ opposite party and the deceased and the accident was occurred out of during the course of employment. There is nothing to suggest that at the time of accident the deceased

consumed alcohol. The Commissioner, having considered oral and documentary evidence, rightly allowed compensation of Rs.3,58,205/- with interest @ 12% per annum from the 30 days after filing of application till the date of payment of compensation by the appellant / opposite party. I don't find any error or illegality in the order of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Khammam and it does not suffer from any illegality, infirmity, warranting interference.

19. For the foregoing discussion and in the result, the appeal is dismissed, with costs while confirming the award and decree dated 28.06.2007 passed in W.C. No. 5 of 2006 by the learned Commissioner for Workmen's Compensation, Khammam.

20. Consequently the appellant/OP-1 shall deposit the compensation amount of Rs.3,58,205/- with interest at 12% per annum under Section 4(A)(3) of the Act on the compensation awarded, excluding on Advocate's fee and Court Fee and the interest shall be calculated after thirty days of filing of application to till the date of payment. The appellant shall pay the compensation amount by way of obtaining demand draft in the name of the Commissioner for Workmen's Compensation, Warangal and send it to the Deputy Commissioner of Labour Warangal within thirty days from the date of receipt of the orders under the intimation to the Commissioner.

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

JUSTICE N.BALAYOGI

Dated: 12.04.2018



HONOURABLE SRI JUSTICE N.BALAYOGI



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Dated 12th April, 2018

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