

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

C.M.A.No.228 of 2006

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the applicants against the order dated 29.10.2004 in W.C.No.23 of 2001 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Warangal-I.

2. The case of the applicants before the Commissioner is that the husband of the first applicant and the father of the second applicant was working as night watchman in the first respondent factory, which belongs to the second respondent. The case of the applicants is that the deceased was killed, while he was on duty as a night watchman on the night of 03.04.2000 by some unidentified assailants. Therefore, claiming compensation for the death of deceased arising out of and in the course of employment, the WC is filed.

3. The second respondent filed a detailed counter denying the entire case and vehemently contended that the deceased was not employed as a night watchman and the factory was shut down long prior to the date of the accident. Therefore, he denied the employer and employee relationship.

4. After examination of the relevant documents and evidence, the Commissioner came to a conclusion that the employer and employee relationship was not proved.

Therefore, the case was dismissed. It is this order that is now impugned in the appeal.

5. This Court has heard Smt. K. Udaya Sri, learned counsel for the appellant and Sri K. Vasudeva Reddy, learned counsel for the respondents.

6. The facts which are visible from the record are that the deceased was found dead in the factory near the gate. The body was badly charred as it was burnt by some unidentified assailants. The respondents denied the employment. It is their specific case that the factory was shut down and that the Inspector of Factories also gave a certificate which is marked as Ex.B.1. The factory was shut down since 1998.

7. In the light of the specific denial of the employer and employee relationship, a burden was cast upon the appellants to prove that the deceased was working in the factory as alleged. They could not adduce any evidence whatsoever to prove the employment. The oral evidence of PWs.1 & 2 does not take the case forward. In fact, PW.2 was specifically cross-examined on her averment in the chief examination that she was dependent on her father, despite being married. She clearly deposed that she did not file any money order receipts in respect of the monies sent by her father from his place of employment. PW.1 also admitted that four years prior to the incident, the deceased left her house. She stated in her cross-examination that the deceased used

to send salary amount and visit her every two months. She also states that she used to write letters, but she admits that she did not file any such documents into the Court. Therefore, the evidence of PWs.1 & 2 does not disclose that the deceased was employed or that he was supporting the two of them by sending some amount from the salary that he was earning.

8. The other documents available are only the inquest, FIR, post-mortem report and death certificate. There is also a dispute in this case raised by the respondents about the actual age of the deceased. No proof is filed to show the age of the deceased. There are two certificates which are available in the record. One is the certificate issued by the Sub-Inspector of Police, Siddipet I-town Police Station, dated 24.05.2000 (Ex.A.6) wherein he certifies that as per the ration card and as per the statement of blood relatives, the age of the deceased is 50 years and not 70 years. The other certificate, which is marked as Ex.A.7, is issued by a Civil Assistant Surgeon, Siddipet wherein he certifies that by the evidence produced by the relatives, the age of the deceased is 50 years. The learned counsel for the respondents strongly urges that neither of two these documents can be relied upon, as neither the Sub-Inspector of Police nor the Civil Assistant Surgeon is competent to certify the age of the deceased.

9. This Court finds substantial force in the said contention. Neither of these officers is empowered under law

to certify the age. Even otherwise, Exs.A.6 & 7 do not inspire confidence. They are not based on any independent examination of material or documents. The ration card of the deceased is also not available. Therefore, this Court holds that there is no clear proof of the age of the deceased and agrees with the contention of the respondents.

10. Although the incident is tragic and a man was burnt to death, neither the Court below nor this Court can award any compensation unless and until the fundamental pre-requisite for maintaining an application under the Workmen's Compensation Act viz., the employer and employee relationship is proved. Unless and until, the said relationship is proved, the case under Workmen's Compensation Act cannot be entertained and decided. In this case, there are no documents or evidence to show that the deceased was employed by the opposite parties.

11. On the contrary, Ex.D.1 certificate shows that the factory was shut down. No independent evidence was introduced to show that on the date of the death of deceased, the factory was functioning or that the minimum staff like the deceased were employed therein in any capacity. In the absence of any such evidence, this Court concurs with the finding of the Commissioner that there is no evidence to show that the deceased was employed by the opposite parties.

12. It is also pertinent to note that the Commissioner rightly noticed that the married daughter is not a 'dependent',

as per Section 2 (d) of the Workmen's Compensation Act and that therefore the second applicant was also not competent to file this application.

13. For all the above reasons, this Court agrees with the finding of the Commissioner. The appeal is therefore dismissed. The order dated 29.10.2004 in W.C.No.23 of 2001 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Warangal-I is confirmed. However, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

Date: 16.03.2018
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D.V.S.S. SOMAYAJULU, J

