

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

C.M.A.No.409 of 2006

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the Oriental Insurance Company Limited questioning the order dated 18.12.2004 in W.C.No.1 of 2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Eluru.

2. The case before the Commissioner was filed by the husband and children of the deceased-N. Durga. Their case is that the deceased was working as a coolie on the tractor and trailer No.AP-37U-2593 and AP-37V 2594 belonged to the second respondent-A. Venkateswararao. The said vehicle was insured with the third opposite party (OP-3)/present appellant-insurance company. The first opposite party-J. Rattaiah was the driver of the said tractor and trailer. As can be seen from the pleading, the deceased was working in the maize field of one Devuluri Baby. She was pouring the maize into the Sheller for processing/separation of maize seeds and at that point of time, her saree fell into the fan belt of the Sheller and she was forcibly pulled into the machine and she sustained grievous crush injuries and died instantaneously. Therefore, they filed the WC case claiming compensation of Rs.2,50,000/- against the respondents/OPs-1 to 3.

3 (a). The first respondent filed a counter stating that he is the driver of the tractor and trailer. He pleaded that the cause of the death was not related to the tractor and trailer and that the cause of the death is due to the Sheller machine only. In para-5 of the counter, OP-1 took a plea that he is just a driver and that the cause of death is due to Sheller machine and not due to the tractor and trailer. Therefore, he pleaded that the case against him should be dismissed.

(b) OP-2 filed a counter stating that he is the owner of the tractor and trailer in question. The deceased was not working as a coolie under him and that there is no employer-employee relationship between him and the deceased.

(c) OP-3/present appellant-Insurance Company filed a counter raising substantial pleas in para Nos.4 to 7 of the counter. They pleaded that the tractor and trailer alone is insured and that the Sheller machine which caused the accident is not insured by the applicants. They pleaded that the accident is not a 'motor vehicle' accident and that there is no separate policy issued by them to cover the risk of machinery or death of workers in the process of separating the maize seeds. The policy that was issued is only a specific policy which does not cover the accident in question.

4. After these pleadings, the parties went to trial. For the applicants, one witness was examined as AW.1 and Exs.A.1 to A.5 were marked. For the opposite parties, RWs.1 & 2 were examined and the insurance policy was marked as

Ex.B.1. The Commissioner after considering the facts and circumstances of the case came to a conclusion that OPs.2 & 3 are liable to pay the compensation. It is this order that is now questioned in this appeal.

5. This Court has heard Sri Narsi Reddy Teegala, learned counsel for the appellant/insurance company-OP.3, Sri A. Chandraiah Naidu, learned counsel for the respondents 1 to 4/applicants and Sri Naram Nageshwara Rao, learned counsel for the respondents 5 & 6/OPs-1 & 2.

6. The insurance company has filed the present appeal raising a substantial question stating that the accident occurred due to the Sheller machine which is used for separating the maize seeds and therefore they cannot be held liable in any circumstances to pay the compensation. Neither the tractor nor the trailer was actually involved in the accident and that the deceased was not an employee of the tractor and trailer also. In para-3 of the grounds of appeal, they have raised the following four issues:

- a) no premium is collected for loading and unloading coolies;
- b) the insured did not employ the deceased;
- c) the deceased was not an employee on the tractor and trailer;
- d) the Sheller machine is not insured by the insurance company.

e) Even as far as Section 147 of the Motor Vehicles Act, 1988 is concerned, the point raised by the appellant is that the statutory coverage extends to the employees being carried (emphasis supplied) in a goods vehicle.

7. These were the points that were essentially urged by the learned counsel for the appellant/OP.3-insurance company. He points out from the evidence that the employee-employer relationship was not proved in this case and that in the absence of employer-employee relationship, no liability can be fastened on OP-2 or OP-3. The learned counsel for the appellant also strongly argued that the cause of accident is not due to the insured vehicle and that the accident occurred when the 'shelling' of the maize seed was taking place in the field of one Devuluri Baby. In reply thereto, the learned counsel for the respondents/applicants contended that the order of the Commissioner is a well-reasoned order and that the tractor was connected to the Sheller that caused the accident and therefore, the owner of the tractor is liable for payment of compensation. Consequently, the insurance company is also liable for payment of compensation.

8. This Court on an examination of the facts and circumstances of the case and after hearing the submissions made by both the learned counsel notices the following:

a) the *sine qua non* or the basis for a complaint or an application under the Workmen's Compensation Act is the employer-employee relationship between the injured/deceased and the employer. A case under the Motor Vehicles Act can be filed by a third party also.

b) After the employer-employee relationship is established, the injured/deceased will have to establish that the accident occurred out of and during the course of the employment.

c) Therefore, any applicant under the Workmen's Compensation Act in order to succeed will have to prove that he/she was 'employed' by the employer and that the injury/death occurred out of and in the course of the employment.

9. The evidence is also to be let in based on the pleadings. As mentioned earlier, OP-1 took a plea that he was merely a driver and that the tractor trailer had no connection with the alleged accident. OP-2 took a plea that there is no employer-employee relationship between him and the deceased. OP-3/Insurance Company clearly pleaded that the Sheller machine, which caused the accident is not insured by them.

10. Against this backdrop, if the evidence is examined, the following facts emerge:

a) The FIR, which is marked as Ex.A.1, clearly shows that the accident occurred in the maize field of Devuluri

Baby. While the maize was being put into the Sheller, the saree of the deceased got entangled in the fan belt and she was forcibly pulled inside, as a result of which she sustained severe and fatal injuries.

b) Even in Ex.A.4, which is the Case Diary, Part-I mentions that the deceased was pouring maize into the Sheller with baskets for processing the separation of maize seeds when her saree fell into the fan belt and she was forcibly pushed inside. The Sheller machine was connected with the tractor and trailer when the accident occurred.

11. The husband of the deceased was examined as AW.1. He states that his wife's saree caught in the fan belt of the Sheller which is connected with the tractor and she died. In the cross-examination, AW.1 admits that "it is true that the Devuluri Baby has to pay the wages for the coolies on the work done". He also admits that D. Ganga, D. James, D. Damayanthi and N. Durga worked along with his wife. He also admits that he did not file any proof to show the employment of the deceased with OP-2. He also admits that he has not filed any document about the 'owner' of the Sheller. These admissions are in the cross-examination of AW.1 by OPs.1 & 2. In the cross-examination by OP-3, he admits that Devuluri Baby has no insurance with OP-3. He also admits as "the Sheller is a different machine. Tractor and Sheller are different. It is true that the tractor is not moving with any material. The wheels are not moving."

12. This evidence is followed by the evidence of RW.1, who is the Asst. Divisional Manager of the insurance company. He filed Ex.B.1 insurance policy and clearly stated that deseeding maize by connecting machinery is not permitted. He also deposed that the deceased was under the employment of Devuluri Baby, but not under OP-2. Therefore, he also states that between Devuluri Baby and OP-3, there is no insurance contract. The liability is therefore only on Devuluri Baby. There is virtually no cross examination of this witness on any of the critical aspects that are deposed by him. This evidence is followed by the evidence of OP-1, who is driver of the tractor and trailer. He states in the chief examination that the accident occurred as the saree of the deceased was caught in the Sheller. He admits that the Sheller belongs to Devuluri Baby and the tractor belongs to OP-2. He clearly states that the deceased was working under Devuluri Baby only. In the cross-examination, it is elicited that the Sheller was fixed to the tractor as per the instructions of OP-2.

13. Based on this oral and documentary evidence, the learned counsel for the respondents/applicants argued that the deceased was not working under OP-2 at all. There is no privity of contract between OP-2 and the deceased. The liability, if any, can only be on Devuluri Baby under whose control the deceased was working and no liability can be fastened on the opposite parties.

14. The learned counsel for the respondents/ applicants argued that the applicants have pleaded about the accident and in the evidence, it is brought out that the Sheller was connected to the tractor and that the accident occurred because the deceased was pulled into the fan belt of Sheller which is working because it was connected to the tractor. Therefore, the contention of the learned counsel for the applicants is that the tractor is the cause of accident and therefore the award of compensation is correct. The order of the Commissioner, according to the learned counsel for the applicants, is correct and the appeal is misconceived.

15. As mentioned in the very outset in this judgment, the first and foremost pre-requisite for the maintainability of case under the Workmen's Compensation Act is the existence of employer-employee relationship.

16. In the case on hand, the admission of AW.1 is clear that the salary of the deceased was being paid by Devuluri Baby. The work that was being carried out at that fatal moment when the accident occurred is the shelling/ separation of the maize seeds with a separate machine called a Sheller. The Sheller according to the evidence of RW.2 belongs to Devuluri Baby. The accident occurred in the field of Devuluri Baby. AW.1 also admits that he did not file any proof to show the ownership of the Sheller. In the light of the facts pleaded in the counters of the opposite parties, the appellant had a duty to prove that the deceased was

employed by OP-2 and that the accident occurred during and in the course of employment with OP-2. The same is not done. Evidence shows that the deceased was employed by Devuluri Baby.

17. The second important aspect that is necessary to be proved in a case like this is the link between the employment and the accident. There is absolutely no connection established between the employment with the present OP-2 and the Sheller machine, which is cause for the accident. It was argued by the learned counsel for the applicants that as the Sheller was connected to the tractor, OP-2 is liable for payment of compensation. In reply to this, the learned counsel for the appellant argued that merely because some power is obtained from an external source, the supplier of power cannot be held liable when the accident occurred due to the machine. He argued with an example that merely because the electricity is used to run a machine, the Electricity Department cannot be made liable for payment of compensation when the accident occurred due to the machine.

18. This Court also agrees with the submissions of the learned counsel for the appellant on this issue. The cause of accident is the Sheller machine. The saree of the deceased got caught in the fan belt of the Sheller. AW.1 clearly admits that the Sheller is a different machine altogether. Therefore, this Court holds that the connection between the employment

and the death of the deceased is not established. Even if the power of the tractor is being used, no liability can be fastened on OP-3. OP-3 insured the vehicle in question with a specific purpose and it does not cover the usage as was done in the present case. The cause of the accident ultimately is the Sheller machine. The wages on that day were being paid by Devuluri Baby to the deceased. Therefore, this Court holds that the entire application filed by the applicants is misconceived. They have chosen to file the case against the wrong persons.

19. OP-1, who is merely the driver of the tractor trailer, had no connection with the accident, as the work was not in machine nor did he cause of the accident. OP-2 clearly denied his employer-employee relationship. Despite this denial, the applicants did not introduce any evidence, to prove the employee of the deceased by OP.2. On the contrary, the admission of AW.1 is that the wages were being paid by Devuluri Baby. The other three co-workers which are named in the deposition were not examined as witnesses. Therefore, the employer-employee relationship between OP-2 and the deceased was not established. OP-3 insured the tractor trailer in question. They did not insure the Sheller which is admittedly a different machine altogether. The contract of insurance between OP-2 and OP-3 does not extend to cover this accident caused by a different machine.

20. For all the above reasons, this Court holds that the impugned order of the Commissioner is incorrect. Accordingly, the Civil Miscellaneous Appeal is allowed and the impugned order dated 18.12.2004 in W.C.No.1 of 2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Eluru is set aside in its entirety. In the circumstances of the case, there shall be no order as to costs.

21. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date: 08.06.2018
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D.V.S.S. SOMAYAJULU, J

