

THE HON'BLE SRI JUSTICE N.BALAYOGI

C.M.A. No.383 of 2008

JUDGMENT:

The Insurance Company aggrieved by the orders of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Patancheru in W.C.No.23 of 1994 dated 28.8.1999 awarding compensation of Rs.71,447/- jointly and severally against the appellant and 3rd respondent, preferred this appeal on the grounds that neither the 3rd respondent nor the respondents 1 & 2 herein have informed the death of the deceased (Malhoth Biloo @ Jagan) to the Insurance Company, which is an irregularity. The doctor who conducted post-mortem on the body of the deceased was not examined. There is no employer and employee relationship between the 3rd respondent and the deceased. It is further contended that the deceased was 8 years old at the time of accident as seen from Ex.A.2-post-mortem report and since he is a minor, the Workmen's Compensation Act, 1923 (for short 'the Act') does not cover the claim of respondents 1 and 2. The deceased was travelling on the tipper as a passenger, but not as a labour.

2. It is further contended that even according to the contents of Ex.A.4-F.I.R. and Ex.A.1-inquest report, the deceased and others were employed by one Ravinder Reddy, who was a labour contractor and were going to Warangal to attend their work and not as a workmen under the owner of tipper lorry bearing No.AP 13T 2463.

3. Heard the learned counsel for the appellant. The respondents 1 & 2 having received notice did not choose to put up

appearance. The appeal was already dismissed for default as against 3rd respondent. Perused the material available on record.

4. Now the point that arises for determination is whether the deceased was employed and was on duty and died during the course of employment and that being 8 years old, he can be treated as an employee and the respondents 1 & 2-applicants are entitled for the compensation?

5. A perusal of the record goes to suggest that the applicants, who are respondents 1 and 2 herein are the legal heirs of the deceased. To prove the claim, 1st respondent, father of the deceased was examined as A.W.1 before the lower Court.

6. The main contention of the appellant-insurance company is that the deceased was not a labour on the tipper, but he was travelling as a passenger at the time of accident. The evidence of A.W.1 coupled with Ex.A.4-copy of F.I.R. would suggest that the tipper bearing No.AP 13T 2463 met with an accident on 01.04.1994 at about 10.00 a.m. According to A.W.1, when the tipper reached the outskirts of Velkatta village on Rajiv Rahadari, due to high speed, rash and negligent driving by its driver, the tipper dashed to a tree, as a result of which, the deceased received injuries and died on the spot. During cross-examination, A.W.1 admitted that he did not file any legal heir certificate to prove that the deceased is his son and further admitted that he has not produced any document to prove the employment of the deceased. It is the evidence of A.W.1 that the deceased was working as a labour on the tipper that belongs to 3rd respondent herein. There is employer and employee relationship between the 3rd respondent and the deceased. A copy

of order in W.C.No.27 of 1994 dated 31.7.1999 and Ex.A.4-F.I.R. clearly shows that the deceased succumbed to the injuries due to the accident that occurred on 01.04.1994. Absolutely, no rebuttal evidence was produced either by the appellant herein or by the 3rd respondent, who is the owner of the tipper. The appellant by non-producing the rebuttal evidence failed to prove that the deceased was not a workman and was in fact, travelling on the tipper on that day as a passenger.

7. As per Section 2(1)(n) of the Act, "Workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) is a workman.

8. As already observed above, the evidence of A.W.1 is supported by Ex.A.4-F.I.R. and inquest report Ex.A.1, which clearly shows that the deceased was under the employment of 3rd respondent. On consideration of the said evidence, the Commissioner came to the right conclusion that the deceased was a workman and there was employer and employee relationship between the 3rd respondent and the deceased at the time of accident, as required under the provisions of the Act.

9. As regards the age of the deceased, in the claim petition, it is recorded as 17 years and A.W.1, father of the deceased also deposed the age of deceased as 17 years. The appellant herein relied on Ex.A.2-post-mortem report, wherein the age of the deceased was mentioned as 8 years and basing on the same, it is contended by the learned counsel for the appellant that the deceased being a minor cannot be said to be a workman under the provisions of the

Act. Admittedly, the age of 'workman' to claim compensation is not mentioned in Schedule-II of the Act and the Commissioner having considered the said provisions opined that the prescribed age is not mentioned in the Workmen's Compensation Act under definition of workman and more over, the employment of the child is not fault of the deceased. Ex.A.2-post-mortem report clearly shows the age of the deceased as 8 years. However, the Commissioner determined the age of the deceased as 16 years holding that for the purpose of factors for working out lumpsum equivalent of compensation amount in case of death under Schedule-IV of the Act, the age of the deceased is determined as 16 years.

10. With regarding to the earnings, A.W.1 deposed that the deceased used to earn Rs.50/- per day i.e. Rs.1,500/- per month as wages. Though the appellant denied the occupation and income of the deceased and stated that the deceased was a passenger in the tipper, did not choose to enter into the witness box to rebut the evidence of A.W.1. In the absence of any such rebuttal evidence and documents produced by the appellant, the Commissioner rightly adopted the wage of the deceased at Rs.30/- per day which was the wage fixed by the Commissioner of Labour, Hyderabad for the unskilled workman for the relevant year, 1994. Accordingly, the Commissioner fixed the monthly wage of the deceased at Rs.780/- per month at the time of death and basing on the same, fixed an amount of Rs.71,304.48 ps. as compensation as per Section 4(1)(a) of Workmen's Compensation Act.

11. Since the deceased died while on duty on the vehicle, the Commissioner fastened liability on the owner of the tipper i.e. 3rd

respondent and as the tipper was insured with the appellant-Company and the policy was in force at the time of accident, made the appellant also liable being the insurer and made both of them liable jointly and severally to pay the compensation to the respondents 1 and 2 herein.

12. In view of the above discussions, I am of the considered view that the impugned order of the Commissioner awarding a total compensation of Rs.71,447/- does not suffer from any legal infirmities warranting interference by this Court.

13. In the result, the C.M.A. is dismissed with costs while confirming the order of the Commissioner for Workmen Compensation and Assistant Commissioner of Labour, Patancheru in W.C.No.23 of 1994 dated 28.8.1999, directing Opposite Parties 1 and 2 who are owner and Insurance Company, to pay an amount of Rs.71,447/- as compensation jointly and severally by way of Demand Draft in favour of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Patancheru, drawn on any schedule bank within thirty days from the date of receipt of a copy of this order. In case of default, to pay interest at the rate of 12% on the said amount in addition to the amount due under Section 4-A(3(b) of the Workmen's Compensation Act.

Advocate fee is fixed at Rs.2,000/-.

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

JUSTICE N.BALAYOGI

20th March 2018
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