

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

CMA No. 585 of 2007

JUDGMENT :

This is an appeal filed against the order dated 28.01.2004 in WC.No.55 of 2002 passed by the Commissioner of Workmen's Compensation and Assistant Commissioner of Labour, Cuddapah.

The applicants are the wife and parents of the deceased, who died in an accident to the Tractor (Engine No.5325/61476 and Trailer No.EM.E.W.O.4/02-03 (2002) on 12.03.2002 while he was engaged as coolie for loading and unloading manure to the lands of the first opposite party. Since the accident occurred in the course of employment, they filed the application against opposite parties 1 and 2, who are owner of the lorry and the insurer of the lorry respectively claiming compensation of Rs.3,00,000/- for the death of the deceased. The first opposite party remained *ex parte* and the second opposite party filed a counter denying the accident and what all is stated in the claim petition.

The first applicant was examined as AW.1 and Exs.A.1 to A.4 were marked. There was no evidence on behalf of the opposite party No.2. After assessing the evidence, the Commissioner came to the following conclusion:

(a) that as per Ex.A.2 inquest report, the deceased N.Ramaiah @ Anthoni was a tractor and trailer coolie at the time of accident. (b) as per Ex.A.4 charge sheet, the deceased N.Ramaiah @ Anthoni was a tractor and trailer coolie at the time of accident. Sri Nagipogu Ramaiah @ Anthoni, while he was in duty and in the course of and out of employment on 12.03.2002, met with the accident, received severe bleeding injuries and died. Since the said accident arose out of and in the course of employment, he held that the deceased tractor and trailer coolie Sri N.Ramaiah @ Anthoni was a “workman” as per the provision of the Workmen’s Compensation Act, 1923. Hence, he directed both the opposite parties to pay jointly and severally an amount of Rs.1,48,706/- as compensation with interest at 9% p.a. from the date of accident till the date of payment besides stamp duty of Rs.297/-. That is the order, which is impugned in the present appeal.

Heard Smt. A.Malathi, learned counsel for the appellants and Sri Sivalenka Ramachandra Prasad, learned counsel for the respondents.

The two essential points that are urged by the learned counsel for the appellant is that (a) the lower Court grossly erred in relying only upon an inquest report to decide on the question of employment of the deceased. (b) granting of interest by the lower Court is totally wrong and that the

insurance company cannot be fastened with the liability to pay interest from the date of accident.

The learned counsel for respondents, however, urged that the Court correctly relied on the inquest report to decide the question. He also urged that in view of a series of judgments of the Hon'ble Supreme Court of India granting of interest is not prohibited.

This Court agrees with the submission of the learned counsel for the respondents on the question of interest. The Hon'ble Supreme Court has clearly held that the insurance company is liable to pay interest also on the awarded amount from the date of accident. The decision of the Hon'ble Supreme Court in **Pratap Narain Singh Deo V. A.Srinivas Sabata and Another**¹ itself lays down that the employer is liable to pay the compensation from the date of the accident. Hence, the 'due date' for payment of interest shall be from the date of accident only and not from any other subsequent date on which the compensation is assessed. The case of **The Oriental Insurance Company Ltd. V. Siby George and Others**² also supports this view for interest.

However, the critical question that is to be decided in this appeal is whether the employer/employee relationship is proved in this case. A few important features that are to be noted are (a) the owner of the tractor/the employer remained *ex parte* (b) the only witness examined is AW.1, the wife of the

¹ AIR 1976 SC 222

² 2012 (12) SCC 540

deceased who is not an eye witness to the accident. (c) the four documents marked are: Ex.A.1-FIR; Ex.A.2-the inquest report; Ex.A.3-post mortem report; Ex.A.4-Charge sheet. (d) No salary slips; wage register etc., or any other document is filed to prove the employer/employee relationship. (e) the accident occurred on “Shiva Ratri” day.

A close examination of the contents of these documents reveal that: (a) in the FIR (Ex.A.1), the complainant is one Annapureddy Chenamma. She gave a statement to the police stating that she along with the deceased and others were proceeding to “Shiva Ratri” festival and that they started for the temple on Shiva Ratri day to do “jagaram”(staying awake through out the night). (b) In the inquest report, however, it is recorded that all the people in the tractor and trailer were going on “coolie work” in the tractor/trailer belonging to first opposite party. It is the submission of the learned counsel that the lower Court wrongly relied on the inquest report to hold that the deceased was an employee of first opposite party. It is true as submitted by the learned counsel that as per Section 174 Cr.P.C., the purpose of an inquest report is only to establish the cause of death, when the death is unnatural or accidental. Much weight cannot therefore be attached to the same in this case. Hence, the earlier and most contemporaneous statement i.e. the FIR is a better piece of evidence as per the learned counsel. An FIR and its contents are also used for corroboration of a case as per

settled law. Hence, this Court is of the opinion that the earliest recorded statement and the facts mentioned therein are more reliable. This Court, therefore, concurs with the submission of the learned counsel for appellant that the inquest report by itself cannot be relied upon to come to a conclusion that the deceased was an employee of the first respondent and that the deceased died during and in the course of employment. The contents of the inquest report are contrary to the statement in the FIR. The FIR speaks of the group traveling for a religious purpose only and not on work.

Therefore, this Court holds that the Commissioner for Workmen's Compensation was wrong in coming to the conclusion that there was an employer-employee relationship between the deceased and the first opposite party. As the fundamental aspect is not proved in this case; the entire order of the lower Court dated 28.01.2004 is set aside and the appeal is allowed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 19.01.2018
KLP