

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.937 OF 2007

JUDGMENT:

Opposite Party No.2 is the present appellant. The present Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 (for short, 'the Act') challenging the order dated 4.10.2007 in W.C. No.8 of 2006 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-IV, Hyderabad.

2. Learned Commissioner, by the aforesaid order for the death of respondent No.1/applicant's husband holding that the applicant could prove the employer and employee relationship between the deceased and the 1st respondent, more particularly, respondent No.1 even admitting the same and discarding the stand taken by Opposite Party No.2-appellant and also holding that there was no violation not only as to use of the vehicle for which insurance was covered but also the driving licence held by the deceased at the relevant time awarded a sum of Rs.3,13,426/- towards compensation and also granted stamp duty and advocate fee making a total of Rs.3,14,554/-.

3. The aforesaid order is under challenge in the present Appeal agitating that there was no employer and employee relationship between the deceased and respondent No.1 as could be

seen from the documentary evidence and the admissions made by the applicant as A.W.1 and even the deceased was not holding valid driving licence as he was holding only driving licence to drive Light Motor Vehicle (Transport), but he was actually driving Tractor, which was a Non-Transport vehicle and meant for agricultural purposes of the insured alone, whereas evidence projecting that it was hired to one Santhosh for a couple of days to plough his land.

4. Heard Sri A. Ramakrishna Reddy, learned counsel for the Appellant-Insurance Company.

None appears for respondent No.1. Respondent No.2 is the owner of the vehicle.

5. So far as employer and employee relationship is concerned, learned Commissioner holding that there was no strong evidence on record, which evidence goes against the applicant to the extent of accidental death of the deceased during the course of his employment, believing that the evidence would prove that the deceased met with an accident, that occurred during the course of employment, held the point in favour of the applicant. In regard to the insurance coverage the Commissioner would observe that Ex.A6 would show that the deceased was covered by the risk of the policy issued by the Opposite Party No.2 and then referring to the decision in **National Insurance Company Limited v. Swaran Singh and**

others¹, relied on by the Insurer-Opposite Party No.2, observing that no evidence is let in to show that the deceased was incompetent to drive the vehicle, and held the said point in favour of the applicant. Thereafter, the Commissioner has taken the wages at Rs.3,014/- and eligibility of compensation 50/100 and keeping in view, the age of the deceased, factor basing on the age of the deceased 207.98 and arrived at Rs.3,13,426/- (Rs.3014 x 50/100 x 207.98)

6. The aforesaid two points were reiterated by the learned Standing Counsel for the Appellant, but what is relevant to be seen is when there is no clinching evidence on record except the admissions of the applicant as A.W.1 where she admits the contents mentioned in the First Information Report-Ex.A-1, nothing else is forthcoming. Learned Commissioner found that the Tractor was used for agricultural purposes only. In fact, the Insurer ought to have summoned either Santhosh to examine or the Driver Polisetty, whose name occurs, but it did not make any attempt except the employee of the appellant being examined as a witness. It is really difficult to hold that there would be any documentary evidence to prove the relationship between employer and employee. In fact, Opposite Party No.1 has not denied engaging the deceased as an employee and the Opposite Party No.1 was not examined by at least summoning him by the Insurer-appellant herein, learned Commissioner recorded finding

¹ 2004 ACJ 1

based on appreciation of evidence on record. Certainly, it is difficult to interfere with the said finding in a Civil Miscellaneous Appeal.

7. Turning to the violation of policy conditions, the deceased was holding transport licence of Light Motor Vehicle only but, not Non-transport. The law laid down by the Hon'ble Apex Court in **S. Iyyappan v. United India Insurance Company Limited**² would answer the said issue. So, what all can be ordered is that the appellant can be directed to pay the compensation amount initially and recover the same from the owner of the vehicle i.e., employer in the present case, who is Opposite Party No.1.

8. Accordingly, the present Civil Miscellaneous Appeal is partly allowed modifying the order under challenge to the extent indicated in the above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 18.06.2018

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² (2013) 7 SCC 62