

HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL MISCELLANEOUS APPEAL No.1124 of 2008

JUDGEMENT:

The appellant / claimant aggrieved by the order dated:23.5.2006 in W.C. Case No.101 of 2000, on the file of the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Vijayawada, Krishna District, holding that, there is no relationship of employee and employer between the deceased and the respondent No.1 as the deceased and respondent No.1 are wife and husband. Therefore, the deceased does not come under the purview of employee under respondent No.1 and as such, the applicant is not entitled for compensation. Further, found that the applicant has filed the application in collusion with the 1st O.P., who is no other than his mother and the applicant and 1st O.P is residing in one house. In the definition of employee: 'but does not include the husband, wife, son, daughter, father, mother, brother or sister of employer, preferred this Appeal.

2. This Appeal was dismissed against respondent No.1 vide order dated:16-3-2016.

3. The contention of the appellant is that the award is contrary to law and weight of evidence. That the Trial Court erred in holding that there is no relationship of employee and employer between the deceased and the respondent and No.1 as the deceased and respondent

No.1 are wife and husband. The respondent No.1 in counter as well as in evidence admitted that the deceased was driver of her lorry bearing No.AHK 5455 and was paid Rs.2000 per month by respondent No.1. The Commissioner cannot come to conclusion on its assumptions and presumptions without any evidence on record in support of its findings. The insurance policy was in force, at the time of accident. Therefore, the respondents are jointly and severally liable to pay compensation.

4. Sri A. Siva Nageswara Rao who is representing the claimant-minor as his paternal uncle examined as AW.1. The respondent No.1 who is the mother of the claimant is examined as RW.1 and the Cleaner on the offending lorry No.AHK 5455 and complainant under Ex.A1 is examined as AW.2.

5. It is the consistent evidence of AW.1 admitted by AW.2 and deposed by RW.1 are that the respondent No.1/RW.1 is admittedly owner of lorry bearing AHK.5455. AW.2-cleaner, immediately after the accident presented Ex.A1 to the police and Ex.A1 is ready with evidence of AW.2, it established that accident occurred on 22.10.1997 at 3.00 am. Whereas, report under Ex.A1 was presented on 22.10.1997 at 4.30a.m., wherein it is specifically mentioned as AW.2 is cleaner and deceased A. Pandu Ranga Rao is driver of lorry bearing No.AHK.5455. Since report was submitted immediately

within 1 ½ hour, there is nothing to suspect the contents of Ex.A1 or discard it.

6. AW.2 specifically deposed and admitted in the cross examination that RW.1 appointed two drivers and two cleaners on the lorry and she used to pay Rs.2,000/- salary to Pandu Ranga Rao- driver among two drivers who is no other than husband of RW.1 is the driver and AW.2 – complainant under Ex.A1 is the cleaner on lorry No.AHK 5455.

Further, the clear evidence of RW.1 is that since fifteen years deceased was working as driver and they were married about 35 years back. Her clinching evidence is that, she is the owner of the lorry AHK 5455 and the accident occurred on 22.10.1997.

That, AW.2-cleaner deposed that immediately after the accident, he informed over phone about the accident and death of Pandu Ranga Rao to the respondent No.1. AW.1 also admits that RW.1 and deceased-Pandu Ranga Rao are wife and husband and the deceased is his brother. He denied the suggestion that deceased himself purchased lorry in the name of RW.1 and maintaining the same. That, it is the clinching evidence of RW.1 which is rebutted by way of RW.1 and AW.1 wherein they deposed that the said lorry was purchased by RW.1 herself and appointed Pandu Ranga Rao-deceased.

During the cross-examination, RW.1 admitted that, there is no appointment letter appointing A. Pandu Ranga Rao because he is her own husband, employed and paid salary at the rate of Rs.2,000/- per month, besides batta per day. AW.2 also deposed about the same fact of relationship between them.

7. The Assistant Administrative Officer of the Insurance Company-respondent No.2 is also examined. His clinching evidence is that RW.1 and deceased-A. Pandu Ranga Rao are the wife and husband and the claimant is their minor son. It is in clear terms that RW.2 deposed that respondent No.1 is the wife of the deceased-driver. His further evidence is that there is no master and servant relationship between respondent No.1 and the deceased-driver as they happened to be wife and husband that is not the correct version. Wife purchased the vehicle, there is no bar under law that an husband cannot be appointed as driver under own vehicle in the name of wife.

During the cross examination, it is also admitted that they have paid O.D claim after perusing all the relevant papers and further admits that he is not aware of the act.

8. In the case of **GOTTUMUKKALA APPALA NARASIMHA RAJU AND OTHERS V. NATIONAL INSURANCE COMPANY**

LIMITED AND ANOTHER¹, the Apex Court having considered the entire material on record held as under:

“In our considered opinion, it is wholly absurd to suggest that the husband would be a "workman" of his wife in absence of any specific contract. We have no doubt in our mind that for the purpose of proceeding under the 1923 Act, only the appellants have concocted the story of husband and wife living separately. If they have been living separately in view of certain disputes, the question of husband being a "workman" under her appears to be a far-fetched one.

Technically, it may be possible that the husband is employed under the wife, but, while arriving at a conclusion that when a dispute has been raised by other side, the overall situation should have been taken into consideration. The fact, which speaks for itself shows that the owner of the tractor joined hands with the claimant for laying a claim only against the insurer. The claim was not bona fide.

No documentary proof to establish the contract of employment was produced. No independent witness was examined. Even as to for what purpose the tractor was being used had not been disclosed. How the accident had taken place is also known borne out from the records of the case. If the deceased, with all intent and purport, was the owner of the tractor, the claim petition under the 1988 Act might not have been maintainable. A petition under 1923 Act certainly would not lie. Only because Section 143 and 167 of the 1988 Act refer to the provisions of the 1923 Act, the same by itself would not mean that the provisions of the 1988 Act, proprio vigore would apply in regard to a proceeding for payment under the 1923 Act. The limited applicability of the provisions of the 1988 Act, in relation to the proceedings under the 1923 Act has been discussed by this Court in the aforementioned judgments. It is, thus, not possible to extend the scope and ambit of the provisions of 1988 Act to the provisions of 1923 Act save and except to the extent noticed hereinbefore.”

In the said case, the fact is that due to some disputes, the wife and husband are living separately. The question of husband being a workman and in the absence of their living separately, in the absence of any specific contract, it is absurd that the husband would be workman of his act. In the above facts, the owner of the tractor, being

¹ (2007) 13 Supreme Court Cases 446

wife of the deceased, raised a contention that she and her husband had been living separately prior to the date of accident and the tractor in question being insured with the first respondent, she was not liable to pay any amount to the claimant by way of compensation. She, however, examined herself as PW.1. Although, no such was made out in the objection filed by the owner of the tractor, it was alleged that her brother had engaged the deceased on a monthly salary of Rs.3,000 per month and batta of Rs.25 per day.

9. Further, Ex.A4 is the Motor Vehicles Inspector report on accidents, wherein it is specifically mentioned that vehicle No.AHK-5455, Ashok Leyland.1982 Model-Open body truck. Further, in the accident, vehicle was insured with New India Assurance Company with policy No.31610802/07141/648 and the policy was in force with effect from 21-09-1997 to 20-09-1998. Whereas, accident occurred on 22-10-1997 by which date policy under Ex.B1 was in force. Against column No.14, in respect of owner-RW.1-Smt. A.Koteswaramma, W/o Pandu Ranga Rao is recorded as registered owner of the vehicle and against column No.15-driver name is recorded as A. Pandu Ranga Rao,S/o Ganapathi and further, driving license.No.2221/K/71 is valid upto 28-10-1998. RW.1 produced driving license of accused which is marked as Ex.A5 which shows that driving license renewed from 29-10-1995 to 28-10-1998 with Badge No.21704 and is authorized to drive the transport vehicle with effect from 10.7.1980. Therefore, on a reading of Exs.A4 and A5,

the evidence of AW1, AW.2 and RW1 and the particulars mentioned in Ex.A4-Motor Vehicles Inspection Report on accidents and the Ex.A1-FIR would establish that the deceased Pandu Ranga Rao assessed valid and effective driving license to drive lorry at the time of accident and owner of lorry is RW.1 and as per Ex.A4-MVI report, deceased was driver and the accident is not due to any mechanical defects of the above vehicle.

10. That, in FIR under Ex.A1 and the inquest report under Ex.A2, there is a specific assertion that AW2-cleaner presented Ex.A1 and inquest report to the police on 22.10.1997 within 1 ½ hour from the time of accident with clear instructions that he was working as cleaner on lorry of the deceased bearing No.AHK-5455 since two years. On 19-10-1997, the deceased and AW.2-cleaner went to Bangalore-Karnataka State with a load of rice. After unloading rice in Bangalore, on 21.10.1997 loaded with beer bottles to Autonagar, Vijayawada and started at Bangalore road at 8.00 pm. In the early hours on 21-10-1997 at about 3.00 am, the lorry turned turtle in which Pandu Ranga Rao died. In the inquest report also, it is opined that Pandu Ranga Rao is driver of the lorry No.AHK-5455, aged about 40 years in which RW.1 is the owner and while returning in early hours on 21-10-1997, the driver of lorry lost control over the vehicle, resulting the lorry turned turtle on the roadside in which Pandu Ranga Rao died.

11. The above facts and the evidence on record of AW1 and AW2 and Exs.A1 to A5 clearly establish that deceased was appointed as driver by his wife-RW1 and AW.2 as cleaner and she used to pay salary of Rs.2,000/- per month. On 19-10-1997, lorry went to Bangalore with a load of rice, after unloading on 21-10-1997 in the return, they have loaded lorry with beer bottles from Bangalore to Vijayawada, met with an accident. AW.2-cleaner is an independent witness who was examined. The purpose of lorry going to Bangalore on the way returning with load of beer bottles has been clearly deposed by AW2 and supported by FIR under Ex.A1 and inquest report under Ex.A2 and clearly deposed purpose for which lorry went to Bangalore and on returning with beer bottles to Autonagar, Vijayawada. The evidence also establish the manner in which the accident taken place. Therefore, the facts of the present case are different to the facts of the case relied upon by the Counsel for appellant. There is an employee and employer relationship between RW.1 and deceased. Though deceased since living together and owner of lorry is RW.1 and even in the absence of any appointment because deceased-A. Pandu Ranga Rao was possessing driving license and the same is noted in FIR and MVI report and also the time of accident is noted in said report, there is employer and employee relationship, he is a workman under the Compensation Act. The accident arose out of and during the course of employment and these facts are not considered by the Commissioner while considering the application under the Workmen's Compensation Act.

12. With regard to age, there is an evidence of RW1 who deposed that her husband was 40 years by the date of accident, married about 35 years back and since 15 years he is working as driver of lorry. AW1 is own brother of the deceased who also deposed that accident occurred on 22-10-1997 involving lorry No.AHK-5455 and the deceased is 40 years. In Ex.A1-FIR, Ex.A2-inquest report, Ex.A3-post-mortem report and Ex.A5-driving license, the age of deceased – A Pandu Ranga Rao is recorded as 40 years by the date of accident and the doctor under Ex.A3 opined that the cause of death is shock and hammarage due to multiple injuries and vital organisms. Ex.A5 is driving license issued to A.Pandu Ranga Rao as early as in the year 1971 itself wherein the date of birth of the deceased is noted as 28.9.1957. Accident occurred on 22-10-1997, accordingly, he was 40 years by the date of accident. Further, no documentary evidence in proof of income is furnished. So, minimum wages can be taken as per G.O.Ms.No.71, dated:16-4-1991. That, as per the formula, the following is the calculation:

$$\text{Rs.}2000 \times 50/100 \times 184.17 = 1,84,170/-.$$

(including stamp duty fee)

13. The respondents 1 and 2 shall deposit an amount of Rs.1,84,170/- plus stamp duty, towards compensation payable to the appellant/applicant by way of demand draft drawn in any nationalized bank in favour of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada, within thirty days from the date of receipt

of copy of this Order, failing which interest of 9% from the date of order is awarded.

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

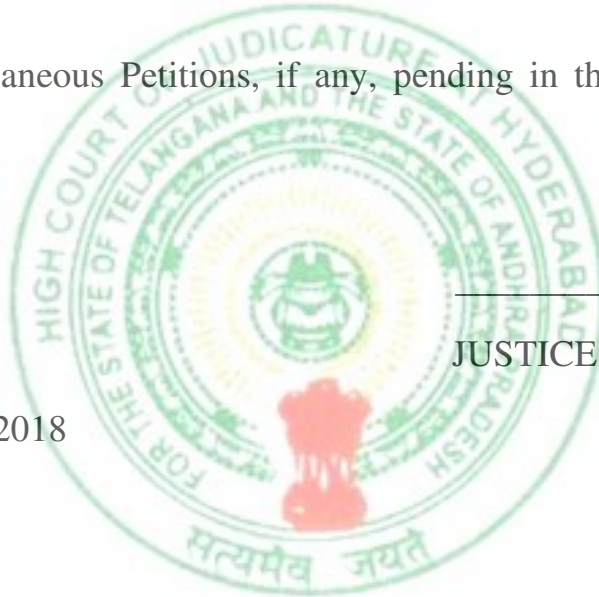
14. In the result, this Civil Miscellaneous Appeal is allowed by setting aside order dated:23.5.2006 in W.C. Case No.101 of 2000, on the file of the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Vijayawada, Krishna District. No costs.

Miscellaneous Petitions, if any, pending in this Appeal, shall stand closed.

JUSTICE N. BALAYOGI

Dated:26-04-2018

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DATED:26-04-2018

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