

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

C.M.A.No.1423 of 2008

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the United India Insurance Company Limited questioning the order dated 20.11.2007 in W.C.No.97 of 2005 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Hyderabad.

The case before the Commissioner was filed by the mother and the sister of a deceased-workman who was employed under the first opposite party as a driver of the Tata Sumo vehicle bearing No.AP09W-9198. The said vehicle was insured with the present appellant/second opposite party. The case of the applicants before the Commissioner is that the deceased was working under OP-1 and was earning wages of Rs.4,000/- per month, besides batta Rs.100/- per day and at the time of death, the age of the deceased-workman is 23 years. Stating that the vehicle was insured with OP-2 under insurance policy, which was valid from 26.11.2004 to 25.11.2006, the application was filed claiming compensation of Rs.5,00,000/- from OP-1 and OP-2 for the death of the workman arising out of and in the course of employment.

OP-1 filed a counter admitting the employment and the wages, but he pleads that since the insurance policy was subsisting as on the date of accident, OP-2 alone is liable to pay the compensation. OP-2 filed a counter denying the case that is set up by the applicants. After the pleadings, the

parties introduced oral evidence. For the applicants, the first applicant was examined as AW.1. Exs.A.1 to A.7 were marked. For OP-1, RW.1 was examined. For OP-2, insurance policy was marked as Ex.D.1.

The Commissioner after considering the evidence on record and after hearing the submissions of the counsel, awarded compensation of Rs.3,64,488/-. It is this order that is now questioned in the appeal.

This Court has heard Sri E. Venugopal Reddy, learned counsel for the appellant/insurance company, Sri M. Krishna Reddy, learned counsel for the respondents 1 & 2/applicants and Sri Y. Nagaiah, learned counsel for the 3rd respondent/OP-1.

The essential question that is urged by the learned counsel for the appellant/ insurance company is that the deceased-workman is the son of OP-1 and the first applicant and the entire exercise is set up only to falsely claim compensation. He strongly urged that there is no employer-employee relationship and that a false case has been filed to claim compensation. The learned counsel appearing for the appellant took pains to point out the inherent deficiencies in this case by which, according to him, it is clear that the case is false. In reply thereto, the learned counsel for OP-1 argued that there is no prohibition for the son to be employed by OP-1. The deceased got separated from the parents and is living separately. Therefore, there is no prohibition in law, according to the learned counsel, from awarding the

compensation. The learned counsel also points out para-19 of the impugned order, the Commissioner considered all the facts and evidence including the separation and came to this conclusion. Therefore, he argued that the case is justified. The learned counsel also points out that paras-20 and 21 of the impugned order, the Commissioner rightly considered two judgments of this Court wherein it was held as follows:

- a) existence of employer-employee relationship need not be proved beyond reasonable doubt.
- b) the question of deciding the employer-employee relationship arises only when there is denial of the relationship. In this case, as the employer admitted the relationship, the Commissioner need not embark on the enquiry on this area of employer-employee relationship.

This Court on an examination of the facts and circumstances of the case and the arguments of both the counsel notices that while there is no prohibition in law from a person employing a son or wife or a near relative; in such cases a greater duty is cast upon the court to examine the facts carefully before coming to any conclusion and awarding compensation. In the case on hand, the father is the employer and his pleading about the employment has to be scrutinized carefully.

On an examination of the oral and documentary evidence, the following are noticed:

a) In the original application filed, there is no averment that the deceased was the son of the first applicant and OP-1;

b) the first applicant-A. Vedavathi describes herself as the wife of 'A. Naresh Gupta'. OP-1, who is admittedly the husband, is shown as 'A. Naresh Kumar';

c) in the counter filed by OP-1, his name is mentioned as Naresh Kumar and he does not state that the deceased was his son;

d) even the chief examination of AW.1 does not say that the deceased was the 'son of OP-1'. Only in the cross-examination, she admits that her son was working with his father and that she has not mentioned this fact at all;

e) in the FIR that is filed as Ex.A.1, this Court notices that the FIR given by one G.Venkateshwar Rao Gupta wherein he mentioned that all the relatives went to Ibrahimpatnam to see plots of land and that the vehicle was being driven by his grandson at that point of time. He does not mention that the grandson was 'employed' as a driver; and

f) even the chief examination of OP-1 as RW.1 does not mention that he is the son and was 'employed' by him. He admits in the cross-examination that there are no vouchers and receipts regarding the wages said to have been paid to Anil Kumar, deceased driver.

On a review of the entire evidence, it is clear that till the time of AW.1 was cross-examined, the fact that the deceased was the son of the first applicant and OP-1 was not

categorically disclosed. In cases of this nature, more so, in view of the close relationship between the parties, the most essential fact to be established is the employment. The employer-employee relationship must be very clearly established. The claim under Workmen's Compensation Act is maintainable, if there is an employer employee relationship and the accident occurred in the course of the said employment.

In ***National Insurance Company Ltd. V. Smt. Sabia Begum***¹, a learned single Judge of this Court had an occasion to deal with the similar case and the learned single Judge has held as follows:

“it is not in dispute that the deceased was the son of the first Opposite Party, but, however, it was their case that he was employed by the first Opposite Party. There may not be any express prohibition for such employment, but, having regard to the defence of the appellant/insurer, if the compensation is claimed by resorting to the provisions under the Workmen's Compensation Act, 1923, the applicants have to establish that the deceased was employed by the first Opposite Party. Though, the word 'employment' is not defined, but, having regard to the scheme of the Act, the word 'employment' has to be necessarily construed as one's gainful occupation for another for the purpose of other's trade or business. As such, mere engagement of services of the deceased, as driver itself is not sufficient. But however, the Tribunal below, in absence of any independent evidence on record, recorded the finding with regard to employment, on a mere presumption. In the cross-examination of A.W.1, there was categorical suggestion that the deceased was not being paid any salary, as claimed by them, at the rate of Rs. 3,000/- per month from the first Opposite Party. Even the documentary evidence on record is not helpful to the applicants for the purpose of proving the employment.

Similarly, the Hon'ble Supreme Court in a judgment in ***Gottumukkala Appala Narasimha Raju's*** case (1 supra) held as follows:

¹ 2005 (6) ALT 610

“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 (emphasis supplied).

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.”

This Court on a review of the entire evidence comes to a conclusion that the evidence introduced in this case does not inspire confidence. While there is no prohibition against a father employing his son as an employee, in cases of the nature where there is a close relationship between the employer and employee, the quality of evidence and pleading should be of a better quality and should contain the clear details of the employment with clarity/precision to inspire confidence in the mind of the Court. Good evidence and also independent corroborative evidence must be introduced to remove every suspicion; in cases of this nature.

In the case on hand, no evidence has been produced to show that the son was employed as a driver by the father. The FIR does not disclose that the deceased was ‘working’ as a driver and merely shows that the grandson was driving the vehicle. Neither in the application nor in the subsequent affidavit is clear data given of the alleged employment.

No facts or figures are clearly pleaded or proved. No documentary evidence is filed to prove the employment. Therefore, this Court in line with the judgment of the Hon'ble Supreme Court in **Gottumukkala Appala Narasimha Raju's** case (1 supra) holds that the owner (OP-1) and the applicant have joined to file this false claim against the insurance company. The appellant is therefore bound to succeed. In this case, the respondents have failed to prove the employer-employee relationship which is the *sine qua non* for the maintainability of the case under the Workmen's Compensation Act.

In these circumstances, the order 20.11.2007 in W.C.No.197 of 2005 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Hyderabad is reversed and the same is set aside.

The appeal is accordingly allowed. However, in the circumstances of the case, there shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 06.06.2018
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