

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

C.M.A.No.224 of 2006

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the New India Assurance Company Limited against the order dated 03.10.2005 in W.C. Case No.188 of 2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad.

The case before the Commissioner was filed by the wife, two children and parents-in-law of the deceased-Sri R. Lingam Goud stating that the deceased is the driver of an auto rickshaw bearing No.AP-28V-5022. This vehicle belonged to the first opposite party (OP-1) and is insured with the second opposite party (OP-2). The applicant states that the deceased took the auto on 07.10.2004 and went to work. Thereafter, he was not found. A complaint was lodged before the police and later a dead body was found in Nandi Vaagu on 10.10.2004. The same was identified by the wife of the deceased as the body of the workman in question and the police registered a criminal case also. Initially, a case of suspicious death was registered and later the police came to a conclusion that the death was due to drowning. Hence the case was filed before the Commissioner claiming compensation of Rs.4,00,000/- for the death of the deceased.

OP-1 in his counter acknowledged the employment and also accepted that the deceased was working with him at the time of death. He pleaded that in view of the valid insurance

policy, OP-2 has to pay compensation. OP-2 filed a counter denying the entire incident and also stating that they are not liable to pay any compensation whatsoever.

The parties went to trial. For the applicants, AW.1 was examined and Exs.A.1 to A.10 was marked. OP-1, who is the owner of the auto rickshaw, was examined RW.1 and Exs.B.1 to B.3 were marked. For OP-2, no oral and documentary evidence was let in, but a copy of the insurance policy was marked as Ex.D.1.

On an appraisal of the facts and also the case law cited, the Commissioner came to a conclusion that the deceased was employed by OP-1 and that the death occurred in the course of employment. Therefore, he awarded compensation of Rs.3,14,554/-. It is this order that is now assailed in the appeal.

This Court has heard Sri Kota Subba Rao, learned counsel for the appellant/insurance company. Despite opportunities being given, there was no representation for the respondents.

The short and simple question that was urged and argued vehemently during the course of submissions is that there is no connection between the death and the employment of the deceased. The learned counsel for the appellant/insurance company argues that unless a casual connection at least is established between the employment

and the death, no compensation can be awarded under the Workmen's Compensation Act.

The learned counsel for the appellant points out that in this case, the discovery of the dead body was made on 10.10.2004 and on 20.10.2004 an application was drafted and filed before the Commissioner. He points out that the vakalat filed by the applicants was executed on 20.10.2004, the court fee stamps were purchased on 20.10.2004 and the complaint was filed. He argues that this is a planned application to claim compensation.

In addition, the learned counsel drew the attention of this Court to Exs.A.5-post mortem report wherein it is clearly held that the deceased died due to drowning. The learned counsel also referred to the chief examination and the cross-examination of AW.1. He points out that in the chief examination, AW.1 did not depose about the 'connection' between the death and the employment and that she merely stated that the deceased left the house on 07.10.2004 at about 8 a.m. and that a couple of days later, his dead body was identified. She deposes that he went to attend 'nature calls' and he died. The learned counsel also points out that in the cross-examination of AW.1, it is clearly admitted that "there was no auto parked near the dead body of my husband."

The learned counsel also points out that in the chief affidavit of PW.2 also, there is no connection established

between the death and employment. Therefore, the argument of the learned counsel is that the essential pre-requisite namely the connection between the death and the employment is not established.

This Court on an appraisal of the facts and evidence and the submissions made by the counsel notices that there is absolutely no explanation forthcoming in the entire case about the reason why the deceased entered the water near the Nandi Vaagu (drain) except stating 'nature call'. There is no proof for this, as there are no eyewitnesses to the incident. No effort was made to establish that the deceased got into the water to clean himself or on some other purpose while he was on duty or in employment. The claim petition and the evidence do not reveal this information. The record available does not show what actually transpired on 07.10.2004. There is no explanation forthcoming about the presence of the body in the water. The death was definitely due to drowning. The connection between the drowning and the employment is to be established clearly. This was not done. Even PW.2 who collected auto from the police did not depose anything about the auto rickshaw. The police officials concerned were not examined to prove that the auto rickshaw in which the deceased supposedly was working was also found at or near the place of the death i.e., the drain. The recovery of the auto at Sadasivpet is clear from Ex.B.3. This is a place far away from the applicants' residence or even first respondent's

address. The fact is that nobody attempted to explain the connection. In the written statement that was filed in the lower Court also, this issue was highlighted. Despite the same, the applicants did not adduce evidence and the Commissioner proceeded to award compensation. Even the case law relied upon by the Commissioner in ***Hindustan Shipyard Limited, Represented by its Chairman and Managing Director, Radm. R.M. Bhatia vs. Mahboob Subhani***¹ is not applicable, because in that case there was categorical evidence that the deceased punched his card and entered the place of employment. Thereafter, he died due to drowning.

In the case on hand, the absence of any evidence of the connection between the drowning and the employment leads this Court to a conclusion that the impugned order passed by the Commissioner is not correct and that the same is passed on an incorrect appreciation of facts and law. Unless and until, the connection between the employment and the cause of death is established, no compensation can be awarded under the provisions of Workmen's Compensation Act. As the same is not even attempted to be established; the case has to fail.

For all the above reasons, the Civil Miscellaneous Appeal is allowed. The order dated 03.10.2005 in W.C. Case No.188 of 2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III,

¹ 2005 ACJ 748

Hyderabad is set aside. 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: 20.06.2018
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