

THE HON'BLE SRI JUSTICE N.BALAYOGI

Civil Miscellaneous Appeal No.776 of 2007

JUDGMENT :

The appellant/Insurance Company aggrieved by the Award dated 8.5.2007 in W.C. No.66 of 2003 on the file of the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour at Mahabubnagar, holding that the deceased is a workman under the 1st Opposite Party. Claimants are entitled to compensation of Rs.2,47,701/- jointly and severally against the appellant and the 4th respondent - who is the owner of the offending lorry.

2. The contention of the appellant is that the Commissioner erred in holding that the deceased was an employee under the owner of the insured vehicle and the accident was out of and in the course of employment. It is further contended that the very documents relied on by the claimants equivocally established that the deceased was a gratuitous passenger in the transport goods vehicle and boarded the vehicle in the mid way, belying the case of employment under the owner of the vehicle.

3. *Per contra*, the respondents 2 and 3 contended that there is evidence of A.W.1 and A.W.2 – eyewitness and the documents under Exs.A1 to A5 that the accident occurred out of and in the course of the employment of the deceased who was appointed by the owner – 4th

respondent as loading and unloading worker of lorry bearing No.AP 03 T 277. The Commissioner came to the right conclusion that the deceased was worker under the owner of the lorry.

4. The Commissioner, having considered the pleadings in the claim petition and counter, settled the following issues for trial :

1. Whether the deceased workman late Sri Bala Satish met with an accident on 17.10.2003, which arose out of and in the course of his employment as a labourer on the lorry bearing No.AP 03 T 277 in the employment of the 1st Opp. Party and died due to the injuries sustained in the accident?
2. If yes, who are liable to pay compensation to the dependents of the deceased workman? And
3. What is the amount of compensation entitled by the dependents of the deceased workman?

5. In support of the claim, A.Ws.1 and 2 were examined and Exs.A1 to A5 were got marked. No oral or documentary evidence was adduced on behalf of Opposite Parties.

6. In view of the rival contentions, now the point that arises for determination is :

“Whether the order suffers from any legal infirmity warranting interference?”

The 3rd claimant, who is none other than brother of the deceased Satish, is examined as A.W.1, besides another M.Chinna Reddy, direct eyewitness to the accident who presented Ex.A1 – F.I.R., is examined as A.W.2.

7. From the consistent evidence of A.W.1 it clinches the issue that A.W.1 is the brother and claimants 1 and 2 are parents of the

deceased Satish. The positive evidence of A.W.1 is that his brother deceased Satish is a workman under the 1st Opposite Party for the monthly wages of Rs.3,000/- which he used to contribute for the maintenance of the family.

8. It is the consistent evidence of A.W.1 that on 17.10.2003, in the early hours, his brother Satish and other labourers loaded the goods into the lorry bearing No.AP 03 T 277 to unload at Jadcherla. At about 17.30 hours, while the said vehicle reached near Addakal village on NH No.7, the driver of the lorry drove it in a rash and negligent manner and dashed against another lorry bearing No.RJ 20 G 2782, which came in opposite direction and caused the accident. In the accident the brother of A.W.1 and driver of both lorries died on the spot.

9. The evidence of A.W.2 supported by Ex.A1 – certified copy of F.I.R. established that the accident occurred on 17.10.2003 at 17.30 hours at Jadcherla and that A.W.2's clinching evidence is that he knows the deceased, who was 24 years old at the time of the death and working as hamali labourer on the lorry of the 1st Opposite Party. It is also the evidence of A.W.2 that the deceased told that he was working on the lorry from Rayalaseema. But, A.W.2 in the cross-examination admitted that he does not belong to the village of the deceased and the deceased used to visit his village to see his brother who is known to him. Further, A.W.2 admitted that he does not know parents of the deceased and how many brothers the deceased has and he does not

know particulars of the members of the family. A.W.2 is a direct witness to the accident and is the person who set the machinery into motion immediately after the accident by submitting Ex.A1 – F.I.R. It is not the rule of law that the eyewitness shall know particulars of all the family members of the deceased. It is sufficient if he could prove beyond suspicion that he is a direct witness and acted according to law. The material on record clearly established that A.W.2 is a person who set the machinery into motion. Therefore, there is nothing to discard the evidence of A.W.2.

10. The contention of the appellant is that the deceased was an employee in a gold shop at Wanaparthi and he boarded the lorry as a gratuitous passenger, therefore, he is not a workman under the Workmen's Compensation Act. It is not the case of the appellant that the 1st Opposite Party was not available to examine and prove that the deceased was not a workman under the 1st Opposite Party - owner of the offending vehicle. The Commissioner, after elaborate discussion of the evidence on record and documentary evidence, came to the conclusion that the panchas under Ex.A2 inquest report opined that the cleaner of the lorry and an unidentified died at the place of the accident, while the deceased and the driver died in the hospital at 9.30 PM. Post-mortem examination was conducted and ExA3 is the post-mortem examination report. Ex.A4 is the report of Motor Vehicles Inspector, according to which accident was not occurred due to any mechanical defect of the vehicle. Ex.A4 clearly established the

occurrence of the accident and the involvement of the insured lorry in the accident. Further, there is legal finding of the Commissioner that the contention of the 2nd Opposite Party – Insurance Company was that the paper clipping in the Eenadu newspaper reported that deceased was working in Silver Shop, but he has not produced any evidence to show that the deceased was not an employee on the lorry. The application was posted for the evidence of the opposite parties on 14.5.2005 and in spite of opportunities being given to them for more than one and half year, the 2nd opposite party has not placed any evidence to prove their contention that the deceased was not an employee on the lorry, but was only travelling as a gratuitous passenger and was an employee of silver shop at Wanaparthi. The death of the deceased while travelling in the lorry bearing No.AP 03 T 277 on 17.10.2003 is established through the police records under Ex.A1 – F.I.R., Ex.A2 – inquest report and Ex.A3 – PME report.

11. The contention of the appellant mainly rests on the inquest report under Ex.A2 wherein it was stated that the deceased was doing cloth business and on 17.10.2003 in the evening the deceased Satish boarded the lorry bearing No.AP 03 T 277 at Kothakota to go to Addakula and when reached K.M. stone No.122/2, the accident has occurred. This is an endorsement in the inquest report. None of the witnesses concerned were examined. More so, the evidence of A.W.1 corroborated with A.W.2 and supported by Exs.A1 and A3 established the presence of the deceased on the lorry at the time of the accident as a

loading and unloading labourer and he is under the employment of the owner – 1st opposite party and the accident occurred out of and in the course of employment of the deceased on the lorry bearing No.AP 03 T 277.

12. Absolutely there is no oral or documentary evidence to establish that the deceased was working in a gold shop at Wanaparthi and his presence on the lorry at the time of accident as a gratuitous passenger. In the absence of any such rebuttal evidence, the Commissioner is perfectly justified in holding that the evidence of A.W.1 supported by Exs.A1 and A3 and inquest report – Ex.A2 established that the deceased was under the employment of the 1st Opposite Party – owner of the lorry bearing No.AP 03 T 277 and the accident occurred out of and in the course of employment on 17.10.2003 at 17.30 hours and while undergoing treatment, the deceased succumbed to injuries. There is employer and employee relationship between the 1st opposite party – owner of the vehicle and the deceased.

13. It is the evidence of A.W.1 that the 1st opposite party insured the lorry bearing No.AP 03 T 277 with the appellant/2nd opposite party. To substantiate the same, the xerox copy of insurance policy was marked as Ex.A5. The policy was in force by the date of accident. By virtue of Ex.A4, the 2nd Opposite Party – Insurance Company has to indemnify the liability of the owner – 1st Opposite Party. Accordingly, the Commissioner held that Opposite Parties 1 and

2 are jointly and severally liable to pay compensation to the dependents who are legal heirs of the deceased workman who died in the course of his employment as labourer on the insured lorry bearing No. AP 03 T 277.

14. Though A.W.1 deposed that the deceased was earning wages at the rate of Rs.3,000/- per month, he did not produce any oral or documentary evidence. The best person to speak about the wages is the owner of the lorry, who is not examined. In the absence of any oral or documentary evidence, the Commissioner is legal in applying the Minimum Wages while awarding the compensation.

15. The Commissioner, in the absence of any evidence to the effect of income, applied the minimum rates of wages as fixed by the Government of Andhra Pradesh in the employment of Public Motor Transport vide G.O.Ms.No.30, L.E.T. & F. (Lab-II) Department, dated 20.7.2000, which was in effect by the date of accident. The basic wage for a cleaner/labourer is Rs.1,437/-. The V.D.A. payable as notified by the Commissioner of Labour, A.P., Hyderabad from time to time was Rs.821.50. The total wage amounts to Rs.2,258.50 and the same is taken as wages for the purpose of calculating the amount of compensation. According to A.W.1 and the claim petition, the deceased was 24 years old and age recorded in the inquest under Ex.A2 and PME report – Ex.A3 is 24 years and the same is considered as the age of the deceased workman at the time of the accident. Accordingly, the Commissioner awarded compensation amounting to Rs.2,46,707/-

together with stamp fee of Rs.494/- and advocate fee of Rs.500/- totalling to Rs.2,47,701/- and the opposite parties were directed to deposit the said total amount by means of a demand draft drawn on any nationalized bank and drawn in favour of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar within 30 days from the date of receipt of the order, failing which the applicants entitled for interest @ 9% per annum on the amount of compensation from the date of filing of the application. The said order is legal and valid.

16. In the facts and circumstances discussed above, I am of the considered view that the Commissioner marshalling the facts and law and the documentary evidence and elaborate discussions, came to the conclusion that the deceased was workman and he met with an accident out of and in the course of employment on the lorry bearing No.AP 03 T 277 and he is the workman as defined under the Act. The Opposite Parties 1 and 2, who are insured and the insurer, are jointly and severally liable to pay compensation, which shall be deposited by the appellant and owner of the vehicle within 30 days from the date of the receipt of the order, failing which claimants are entitled to interest at 9% per annum on the amount of compensation from the date of filing of the application. The said order does not suffer from any legal infirmity.

17. The Civil Miscellaneous Appeal is accordingly dismissed while confirming the Award dated 8.5.2007 in W.C. No.66 of 2003 on

the file of the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour at Mahabubnagar. No order as to costs.

18. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

09th April, 2018
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