

HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL MISCELLANEOUS APPEAL No. 564 OF 2009

JUDGMENT:

1. The appellant/New India Insurance Company Limited preferred this appeal aggrieved by the Award and decree dated 28.02.2007 passed in W.C. No. 4 of 2006 whereby the learned Commissioner for Workmen's Compensation, Eluru & Assistant Commissioner, Labour, Eluru, allowed the aforesaid W.C. awarding compensation of Rs.2,40,520/- and directed the appellant herein and second respondent to pay the said amount jointly and severally within thirty days from the date of receipt of order.

2. The appellant mainly contended that the accident did not occur during the course of employment; that the deceased was the real owner of the tractor which was nominally registered in the name of his wife and that the deceased was not a workman under his wife.

3. The case of the first respondent/applicant in brief is as follows: One Y.Venkat Rao while working as driver on tractor bearing No. AP 37 U 5402 met with an accident on 25.11.2005 at about 5.30 PM near Punta as the said tractor turned turtle and died on the spot. He was aged 45 years and used to earn Rs.4,000/- per month as salary besides Rs.50/- per day as batta. The first respondent/applicant is the mother of the deceased whereas second respondent/First Opposite Party is the owner of

the tractor bearing No. AP 37U 5402, which was insured with the appellant/second Opposite Party.

4. Before the trial Court, the appellant/OP.No.2 filed counter contending that the deceased was working as driver on the tractor bearing No.AP 37U 5402 belonging to the second respondent/ OP.No.1 who is the wife of the deceased. It does not admitted that during the course of employment, the deceased involved in the accident and sustained injuries and died due to injuries and that he was 45 years and earning Rs.4,000/- per month besides batta @ Rs.50/- per day. It submitted that in the FIR also, it was stated that the said tractor belongs to the deceased eventhough registered in the name of second respondent/OP.No.1, his wife; that the deceased was living with his wife/OP.No.1 and children at the time of accident. It was further stated in the counter that the deceased was not having valid and effective driving licence as on the date of accident.

5. Basing on the rival pleadings, the learned Commissioner framed the following issues for settlement:

1. Whether the deceased is a workman, died while on duty and whether the accident occurred during the course of employment or not ?
2. What are the wages and age particulars to determine the quantum of compensation and whether all the opposite parties are liable to pay compensation ?

6. In order prove the respective claims, the first respondent/applicant was examined as AW.1 and got marked Exs.A.1 to A.5. None were examined on behalf of the

appellant/OP.No.2 and second respondent/OP.No.1, however, Ex.R.1 policy was got marked on their behalf.

7. The first respondent herein/applicant was examined as AW.1 In her Chief evidence affidavit, she specifically stated that her son/Y.Venkata Rao while working as driver under the second respondent/OP.No.1 on tractor bearing No.AP 37U 5402 met with an accident on 25.11.2005 at about 5.30 PM near Punta at Chintayagudem and died on the spot. She was fully dependent on her deceased son.

8. With regard to the existence of 'employee' and 'employer' relationship, except A.W.1, none were examined. Ex.A.1 Copy of FIR which was submitted by the son of the deceased, Rajendra Prasad stated that while the deceased was proceeding with tractor bearing No. AP 37 U 5402 through their fields in Chintayagudem and when he was getting down near Veerabhadra tank bund, the tractor turned turtle, due to which, the said Venkat Rao fell under the tractor and died on the spot. The inquestdars under Ex.A.2 also opined that while the deceased driving the tractor, it turned turtle, fell under the tractor and died on the spot.

9. In the case of ***PRAPULLA CHANDRA SATYANARAYANA Vs. SMT.PRAPULLA CHANDRA APPALAKONDA*** {2011 (5) ALT 640} it was observed that the salary certificate (Ex.A.7) was not proved as contemplated under law by examining first respondent, who issued it and therefore an

adverse inference was drawn about the alleged employment of the applicant/injured with the offending vehicle. It was held that it is the foremost burden of the applicant to prove that he sustained injury during the course of his employment.

10. In the above referred case, admittedly as per the evidence of applicant therein, he was living along with the OP.No.1 as wife and husband under same roof. Though the OP.No.1 was admittedly owner of the offending auto, as per Exs.A.4 and A.5 the fact remains that both the applicant and OP.No.1 were husband and wife leading marital life under one roof. But salary certificate (Ex.A.7) was not proved by the Opposite Party for the reasons best known to him. As per Section 12 of the Workmen's Compensation Act, the applicant/injured would not come under the definition of 'workman'. Since the injured/applicant was none other than the husband of OP.No.1 he will not fall under the workman and therefore he is not entitled to claim compensation from the Insurance Company. The Tribunal while discussing the evidence on record came to the positive finding that the applicant will not come under the definition of workman. In view of the same, the High Court did not interfere with the finding of the Tribunal and thereby allowed to sustain its findings.

11. The facts of the case on hand are entirely different to the facts of the case referred to above and the aforesaid decision has no help to the case of the appellant. In the case on hand, the applicant alone was examined as AW.1. Her consistent evidence

is that her son was working as driver on the tractor bearing No.AP 37 U 5402 belonging to the second respondent/OP.No.1 since several years and he was earning Rs.4,000/- per month towards salary besides Rs.50/- per day towards batta. During her cross examination, she admitted that the deceased is her son and the second respondent/OP.No.1 is her daughter-in-law. She denied the suggestion that her son was not working on the tractor and that he was the owner of the offending tractor. She further denied that the said tractor was kept in the name of wife of the deceased and the deceased himself was the real owner of the said tractor. With regard to the income, the evidence of AW.1 is that the second respondent/OP.No.1 used to pay Rs.4,000/- per month towards salary and Rs.50/- per day towards batta to the deceased. No rebuttal evidence was produced by the appellant/OP.No.2. She admitted that her deceased son used live with his wife/OP.No.1.

12. From the evidence of AW.1 it is clear that the tractor bearing No. AP 37U 5402 was belonged to the second respondent/OP.No.1 whereas the deceased used to work as driver on the said tractor and was earning Rs.4,000/- per month towards salary and Rs.50/- per day towards batta. She did not file any salary certificate, because wife/OP.No.1 purchased the tractor on which her husband was working as driver; as such, normally there would not be any pay register or proof of payment of salary. Ex.A.2 Inquest report and Ex.A.3-Post Mortem examination report show that second respondent herein/OP.No.1 was the

owner of the said tractor and at the time of accident, the deceased was working as driver on the said tractor. AW.1 specifically denied that her deceased son was the real owner of the tractor and that he was not working as driver on the said tractor at the time of accident. Further she denied that the said tractor was kept in the name of her daughter in law/wife of deceased/OP.No.1 though it was purchased by the deceased, husband of OP.1. Her specific evidence is that the deceased used to earn Rs.,4,000/- per month and maintain the family. No rebuttal evidence was produced by the appellant/OP.No.2 to the evidence of AW.1 and documentary evidence adduced by her thereon.

13. Ex.A.4 is the driving licence issued in the name of the deceased Venkat Rao who was authorized to drive motor cycle with gear, light motor vehicle/auto rickshaw and transport vehicle. He was thus having valid and effective driving licence to drive the tractor at the time of accident. Ex.A.5 is the Insurance Policy issued in the name of the second respondent/OP.No.1, owner of the tractor and the same was valid from 29.01.2005 to 27.01.2006 where as the accident occurred on 25.11.2005, by which date the policy was in force.

14. There is no prohibition in law for employing member of family in connection with tractor-trailer. No doubt the applicant did not produce any salary certificate or age proof of the deceased, except Ex.A.4 driving licence, according to which the date of birth of the deceased is 01.11.1954 and as on the date of accident, he was aged 51 years. In Ex.A.2-Inquest report as well

as Ex.A.3-PME report, age of the deceased was noted as 48 years. Therefore the Tribunal took the age of the deceased as on the date of the accident as 51 years.

15. There is clear finding that the deceased was the employee under the second respondent/OP.No.1, owner of the tractor and as already discussed, there is no prohibition for appointment of member of family as driver on the tractor. Thus there is 'employer' and 'employee' relationship between the second respondent/OP.No.1 and the deceased. Since no income proof was produced, the learned Commissioner relied on G.O.Ms.No.30, Labour Employment Training and Factories (Lab.II) Depttment dated 27.7.2000 published in the A.P.Gazettee No.320, dated 27.7.2000 wherein a light motor vehicle driver's minimum wages was Rs.1874/- p.m. and the VDA payable from 1.10.2005 to 31.3.2006 was 134 points and accordingly took the wages of the deceased at Rs.3214/- per month. Considering the age factor, the tribunal assessed the compensation payable to the first respondent/applicant at Rs.2,40,519.69 Ps which was rounded to Rs.2,40,520/-. By virtue of the Ex.A.5 Insurance Policy, the appellant/OP.No.2 has to indemnify the liability of the insured/second respondent/OP.No.1. Hence they are jointly and severally liable to pay the compensation. Thus the findings of the Tribunal are valid, legal and do not suffer from any legal infirmities warranting interference with the Award.

16. For the foregoing discussion and in the result, the appeal is dismissed, with costs, confirming the Award and decree

dated 28.02.2007 passed in W.C. No. 4 of 2006 by the learned Commissioner for Workmen's Compensation, Eluru & Assistant Commissioner, Labour, Eluru.

17. The appellant/OP.No.2 and second respondent/OP.No.1 are directed to deposit the compensation awarded by the Tribunal jointly and severally, if not already paid/deposited, with in a period of thirty days from the date of receipt of a copy of this judgment after adjusting the amount if any already paid.

18. On such deposit, the first respondent/applicant is permitted to withdraw the same.

19. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

DATED 31st JANUARY, 2018.
Msnr_x

JUSTICE N. BALAYOGI