

**THE HON'BLE SRI JUSTICE N.BALAYOGI**

**Civil Miscellaneous Appeal No.183 of 2009**

**JUDGMENT :**

The appellant – Insurance Company aggrieved by the order in W.C.No.1 of 2004, dated 1.4.2008, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, at Nellore, holding that the deceased was a workman as per the provisions of the Act and he died due to injuries received in the accident arising out of and in the course of his employment under the 1<sup>st</sup> Opposite Party; further, the Commissioner considering the age of the deceased mentioned in PME report as 19 years, applying the minimum wages fixed to the driver in Public Transport vide G.O.Ms.No.30/27-7-2000 and awarding an amount of Rs.3,19,776 against both Opposite Parties jointly and severally being owner and insurer of the vehicle in question; and further, the Commissioner directing both respondents to deposit the said amount by means of Demand Draft in favour of Commissioner for Workmen's Compensation, Guntur on State Bank of India, Guntur within thirty days from the date of receipt of the order and submit D.D. in the office of the Deputy Commissioner of Labour, Guntur, for further action, preferred this appeal.

2. The contention of the appellant – Insurance Company is that the Commissioner erred in holding that the deceased was the driver

and Exs.B2 and B3 show that the 3<sup>rd</sup> respondent/owner never employed the deceased as a driver and no driving licence was filed.

It is further contended that there was no employer and employee relationship between the 3<sup>rd</sup> respondent/owner and the deceased and the deceased cannot be treated as driver as no driving licence was filed.

3. *Per contra*, the respondents/applicants contended that A.W.2 is eyewitness to the accident. The statement filed by the 1<sup>st</sup> Opposite party is not proved as contemplated under law. There is specific denial of A.Ws.1 and 2 that the deceased not related to the 1<sup>st</sup> Opposite Party and that the appellant did not prove that the driver had no driving licence at the time of the accident. The findings and conclusions of the Commissioner are legal, valid and do not suffer from any legal infirmities warranting interference.

4. Now the point that arises for determination is :

*“Whether the order of the Commissioner suffers from any legal infirmity?”*

5. The learned counsel for the appellant/Insurance Company alleged that there is no employer and employee relationship and the document filed by the 1<sup>st</sup> Opposite Party shows that he never employed the deceased as a driver.

6. *Per contra*, the contention of respondents/applicants is that the alleged document is not proved as contemplated under law.

7. The material on record goes to suggest that the 1<sup>st</sup> Opposite Party – Chandra Venkateswarlu is the owner of the tractor and trailer bearing No.AP 26 H 7919 which was insured with the appellant by the 1<sup>st</sup> Opposite Party under Ex.B1 Policy which was in force from 26.9.2003 to mid night of 25.9.2004. The accident occurred on 28.9.2003 near Marripadu to Pallavolu Road near the lands of Gangineni Chandraiah.

8. The 1<sup>st</sup> applicant Ramanaiah is examined as A.W.1 and Bathina Sudhakar – eyewitness to the accident is examined as A.W.2. A.W.1 in the evidence affidavit reiterated the pleadings of the claim petition and A.W.2 in his evidence clearly stated that he was examined by the Police. Nothing suggested to discard the evidence of A.W.2. The evidence of A.W.1 corroborated with A.W.2 is that on 28.9.2003 at about 13.45 hours while A.W.2 was standing on the road side near his field, the deceased Ratakonda Ramesh was proceeding on the tractor and trailer bearing No.AP 26 H 7919 and at that time, a scooter was coming in opposite direction and with a view to avoid the accident and anticipating danger, the deceased jumped out of the said tractor and fell on the ground and the wheels of the tractor ran over the deceased and he died while shifting to the Hospital. A.W.2 further corroborated with A.W.1 that the deceased was working under the 1<sup>st</sup> Opposite Party as a driver on the tractor. Ex.A1 is the earliest report submitted by Nali Murali Vijaya Kumar wherein he clearly asserted that on 28.9.2003 at about 1.45 PM while the deceased Ramesh was proceeding with tractor

bearing No.AP 26 H 7919, on the opposite direction, scooter bearing No.AP 04 TR 5720 with pillion rider came and both vehicles dashed each other and the tractor driver Ratakonda Ramesh Kumar jumped towards the right side of the tractor and he fell under the tractor wheels and sustained injuries. In Ex.A1, there is clear assertion of the presence of the Ratakonda Ramesh on the tractor at the time of the accident. The inquestdars under Ex.A2 – inquest also opined that the deceased Ratakonda Ramesh Kumar on 28.9.2003 driven the tractor bearing No. AP 26 H 7919 and when he reached near the lands of Gangineni Chandraiah at about 1.45 PM, from Marripadu side scooter bearing No.AP 04 TR 5720 came with pillion rider and both vehicles were collided. The tractor driver Ratakonda Ramesh, son of Ratakonda Ramanaiah drove the tractor with high speed and lost the control and jumped to the right side of the tractor.

9. The evidence of A.W.1 corroborated with A.W.2 supported by Exs.A1 and A2 well established the presence of the deceased Ratakonda Ramesh Kumar as a driver at the time of accident on 28.3.2009.

10. The case of this appellant is completely based on Ex.B2 dated 12.2.2004 allegedly submitted by the 1<sup>st</sup> Opposite Party wherein it is stated that Ratakonda Ramesh is not employed by the 1<sup>st</sup> Opposite Party and he did not pay any wages to him. The owner of the tractor involved in the accident having received summons in W.C. No.1 of 2004, did not appear and set *ex parte*. The Senior Assistant of the

2<sup>nd</sup> Opposite Party is examined as R.W.2. His evidence is that there is no relationship of employer and employee among the 1<sup>st</sup> opposite party and the deceased, as such, the death of deceased is not in the course of his employment. He marked policy, alleged letter addressed by 1<sup>st</sup> Opposite Party and claim form as Exs.B1 to B3. During cross-examination, he admits that he has no personal knowledge about the accident. The author of the letter / 1<sup>st</sup> Opposite Party is not examined. The Insurance Company did not take any steps to examine the author of Ex.B2. The Commissioner, having considered the ocular evidence of A.Ws.1 and 2 and the contents of Exs.A1 and A2 rightly came to the conclusion that the letter - Ex.B2 is not proved as contemplated under law and the deceased was present on the tractor at the time of the accident as driver and he was under the employment of the 1<sup>st</sup> Opposite Party – owner of the tractor and trailer bearing No.AP 26 H 7919. Such finding is legal, valid and does not suffer from any legal infirmity.

11. The further contention of the 2<sup>nd</sup> Opposite Party/appellant is that the driving licence of the deceased was not filed to prove that he holds driving licence and was driver of the tractor and trailer at the time of the accident. The evidence of his own man R.W.1 is that the driver has no valid and effective driving licence to drive tractor and trailer. It is obligatory on the part of the Insurance Company, which issued Ex.B1 policy, soon after receipt of intimation or notice of the accident, to issue notice to the owner of the vehicle involved in the accident i.e.,

1<sup>st</sup> Opposite Party calling for copies of driving licence with particulars, insurance policy, copy of F.I.R. and other relevant documents relating to the tractor and trailer involved in the accident. But, no such notice has been issued by the appellant, thereby the appellant failed to discharge the mandatory obligation caste upon it.

12. The appellant has taken a plea that there is no driving licence to the deceased at the time of the accident. However, it did not choose to summon RTA to produce the extract of driving licence of the deceased or at least applied for the same.

13. Absolutely there is no iota of evidence to hold that the deceased has no driving licence at all, particularly valid and effective driving licence. The Commissioner, having considered the oral evidence of A.Ws.1 and 2 and documentary evidence of Exs.A1 and A2 and also Ex.B3 – Motor Claim Form submitted by Chandra Venkateswarlu – Opposite Party -1, where in Column No.3 name of the driver is mentioned as Ratakonda Ramesh – deceased, rightly came to the conclusion that the appellant has failed to prove that the deceased has no driving licence to drive such vehicle by examining any witness to prove the same. Such finding is legal and do not suffer from any legal infirmity.

14. In the facts and circumstances above and findings therein, I am of the considered view that the Commissioner having considered the oral evidence of A.Ws.1 and 2 and documentary evidence in Exs.A1 to A3 and Exs.B1 to B3 and discussed the evidence of R.W.1, rightly

came to the conclusion that there is employer and employee relationship between the 1<sup>st</sup> Opposite Party and the deceased. The appellant failed to prove Ex.B2 letter alleged to have been addressed by the 1<sup>st</sup> Opposite Party by examining the person connected to it. The deceased was driving the tractor at the time of accident and accident arose out of and in the course of his employment under the 1<sup>st</sup> Opposite Party. The evidence of A.W.1 corroborated with A.W.2 supported by Exs.A1 to A3 well established that the deceased was working as driver on the tractor of the 1<sup>st</sup> Opposite Party and the accident occurred out of and in the course of his employment under the 1<sup>st</sup> Opposite Party. There is direct nexus between the accident and PME report – Ex.A3. Since there is no concrete evidence with regard to wages, the Commissioner has rightly applied minimum wages as fixed in public motor transport vide G.O.Ms.No.30/27-7-2000 and considered the age of the deceased as mentioned in Exs.A2 and A3 as 19 years and wages were fixed at Rs.1,874/- besides VDA of Rs.960/- totalling to Rs.2,834/- and arrived the compensation at Rs.3,19,776/- and directed Opposite Parties 1 and 2 to pay the compensation jointly and severally being owner and insurer and both respondents were also directed to deposit the said amount of Rs.3,19,776/- by means of Demand Draft drawn in favour of Commissioner for Workmen's Compensation, Guntur on State Bank of India, Guntur, within thirty days from the date of receipt of the order and submit the D.D. in the office of the Deputy Commissioner of Labour, Guntur, for further action. The impugned order is strictly in

accordance with law and it is legal, valid and do not suffer from any legal infirmities.

15. In the result, the Civil Miscellaneous Appeal is dismissed with costs, while confirming the order in W.C.No.1 of 2004, dated 1.4.2008, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, at Nellore.

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

10<sup>th</sup> April, 2018

skmr



JUSTICE N.BALAYOGI