

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.6178 of 2018

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.08.08.2018 in I.A.No.30 of 2017 in E.C.No.28 of 2015 of the Commissioner for Employees' Compensation and Assistant Commissioner of Labour-IV, Twin Cities Zone, RTC Cross Roads, Hyderabad.

2. The petitioner claims that her husband Mallesh, who was working as driver with the 1st respondent organization, died in a road accident and filed a claim being E.C.No.28 of 2015.

3. The father of the deceased by name Lal Singh also sought compensation by filing W.C.No.40 of 2015 before the Commissioner for Employee's Compensation and Assistant Commissioner of Labour-II (Twin Cities Zone), Hyderabad.

4. In that W.C.No.40 of 2015 a lady, by name Smt. Mudavath Bujji, got herself impleaded claiming to be the first wife of the deceased and that application was allowed and she was impleaded as the 4th applicant.

5. Later the said W.C.No.40 of 2015 was transferred to the Commissioner for Employee's Compensation and Assistant Commissioner of Labour-IV, Twin Cities, Hyderabad, and re-numbered as E.C.No.161 of 2015.

6. Both E.C.No.28 of 2015 and E.C.No.161 of 2015 are being tried together.

7. The petitioner herein, who is the petitioner in E.C.No.28 of 2015, was examined as AW.1 and got marked Exs.A.1 to A.7 and she was also cross-examined by counsel for other parties including those in E.C.No.161 of 2015.

8. The father of the deceased was examined as AW.2 in E.C.No.161 of 2015 and counsel for the petitioner herein and counsel for the Insurance Company cross-examined AW.2 at length.

9. Petitioner then filed I.A.No.30 of 2017 in E.C.No.28 of 2015 to direct Smt. Mudavath Bujji, who was impleaded as the 4th applicant in E.C.No.161 of 2015, to appear before the Commissioner to give evidence and subject herself to cross-examination by the petitioner's counsel.

10. In the said application she alleged that the father of the deceased had spoken about the said lady as the first wife of the deceased, and when a question was put to him he stated that he would not be able to produce the said lady before the Commissioner; petitioner had denied that the said lady was the first wife of the deceased; and unless the said lady is brought before the Court to give evidence and is cross-examined, it cannot be proved that she is the first wife of the deceased and that she also has a child through the deceased.

11. Counter-affidavit was filed opposing the said application by the father of the deceased. It is pointed out that the question of

dependency will be decided at the time of Dependants' Enquiry only and the application is premature.

12. The Court below accepted the said contention and rejected the application filed by the petitioner stating that it was not maintainable; and person, who is the applicant in another case, cannot be brought as a witness in E.C.No.28 of 2015 and the Commissioner had no power to do so. But, the Commissioner specifically stated that the question as to who is the first wife and who is the second wife of the deceased would be decided during Dependants' Enquiry.

13. Assailing the same, this Revision is filed.

14. Counsel for the petitioner contended that unless the alleged first wife Smt.Mudavath Bujji is summoned to the Office of the Commissioner and subjected to cross-examination in E.C.No.28 of 2015, the truth about the alleged marriage between the deceased and said lady would not come out and the petitioner cannot be denied the right to cross-examine the said person.

15. The primary duty of the Commissioner is to determine the compensation payable on account of the death of the deceased. If liability can be fastened only on the Insurance Company i.e., on the 2nd respondent or the 1st respondent, as the case may be, after compensation is determined, then the question as to who would be entitled to the compensation or part thereof would have been gone into. When the compensation itself has not yet been determined, the Commissioner cannot be compelled to go into the question as to which of the parties i.e., the petitioner or the father of the deceased or

Smt. Mudavath Bujji or some or all of them, would get the compensation or only a share in the compensation.

16. If the said Smt. Mudavath Bujji had stayed away from the witness box, it is certainly open to the Commissioner to draw an adverse inference against her at the stage of the Dependants' Enquiry, but the Commissioner cannot be compelled to summon her and subject her to cross-examination as is being sought by the petitioner at this stage.

17. I, therefore, do not find any merits in the revision.

18. Accordingly, the revision is dismissed. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

26th February 2018

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M.S. RAMACHANDRA RAO, J