

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL MISCELLANEOUS APPEAL No.880 of 2007

JUDGMENT:

This Civil Miscellaneous Appeal is filed under Section 30 of Workmen's Compensation Act, 1923 (for short 'the Act') by the opposite party/Singareni Collieries Company Limited represented by its Assistant General Manager, Yellandu against the respondents assailing the orders dated 08.06.2007 in W.C.No.11 of 2004 before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Khammam.

2. The applicant Smt.S.Shoba being the widow of the deceased S.Bikshapathi has filed application in W.C.No.11 of 2004 under the Act claiming compensation for untimely death of her husband Bikshapathi, who was working as Collieries Officer in Singareni Collieries Company Limited, Yellandu with a monthly salary of Rs.7,853.75 paise. It is alleged that in view of sudden death of her husband she is put to untold mental agony as the entire family was depending on him and as per the Government Orders the said disease Bronchogenic Carcinoma

was also included in the list of diseases facilitating the family members of the deceased for claiming compensation and as such, the claimant claimed compensation of Rs.3,38,000/-.

3. The opposite party/employer has filed a detailed counter denying their liability stating that the deceased was sick from 18.03.1999 onwards, undergone treatment for Bronchogenic Carcinoma with multiple secondaries and died on 10.04.1999. Though it is a notifiable disease it is not a compensable disease as per DGMS Circular and it does not attract the provisions of the Act for payment of compensation.

4. During enquiry, on behalf of applicant, she herself got examined as PW1 and in her evidence Exs.A1 to A3 documents are marked. Ex.A1 is pay-slip and Exs.A2 and A3 are the Death Certificates of the deceased. Whereas, on behalf of opposite party, RW1- Personal Manager and RW2 Additional Chief Medical Officer of Singareni Collieries Company Limited are examined and Exs.B1 and B2 documents are marked.

5. On a careful appreciation of the entire oral and documentary evidence, the learned Commissioner for Workmen's

Compensation and Assistant Commissioner of Labour at Khammam has answered all the issues in favour of the applicant holding that the deceased was employed by Singareni Collieries Company Limited and he died of cancer, which has direct nexus to his employment. Accordingly, a sum of Rs.1,70,280/- was awarded as compensation. Feeling aggrieved by the same the employer/opposite party has filed this appeal.

6. Heard learned counsel for the appellant. The submissions made have received due consideration of this Court.

7. Be it stated that this appeal is filed under Section 30 of the Act but on perusal of the grounds of appeal ground Nos.1 to 9 are only based on facts and no legal issue much less substantial question of law is framed. It is strenuously contended by learned counsel for the appellant that as per Ex.B2 Circular, Bronchogenic Carcinoma though a notified disease, it is not a compensable disease and that the applicant is not entitled for any compensation.

8. Evidently and undisputedly the deceased workman died due to Bronchogenic Carcinoma with multiple secondaries on 02.04.1999. Under Section 25 of Mines Act and as per the Circular issued by the Director General vide Gazette Publication No.2621 and as per the evidence of RW2 Central Government has notified that Asbestosis and cancer of lung are the diseases connected with mining operations. The learned Commissioner has took a pragmatic approach holding that the cancer is not a single disease but it is a family of diseases, each characterized by its own axiological morphological, patho-physiological and clinic profile and just because particular name is not mentioned in the Circular Memo, it does not attract the principles of the natural justice and the employer is not absolved of their liability and accordingly, awarded compensation. As per the letter dated 10.09.2007 such amount was deposited with the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Khammam.

9. Section 3 of the Act deals with the employer's liability for compensation. Under Section 3(1) of the Act, it has to be established that there was some casual connection between the

death of the workman and his employment. If a workman dies a natural result of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear, of the employment no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable **(Jyothi Ademma Vs.Plant Engineer, Nellore¹)**.

10. I may also refer to the recent decision of the Hon'ble Apex Court in **Golla Rajanna etc., etc., Vs. The Divisional Manager and another etc., etc.,²** wherein while dealing with the scheme of Workmen's Compensation Act, held at paragraph No.11 as under:

“Under the scheme of the Act, the Workmen's Compensation Commissioner is the last authority on facts. The Parliament has thought it fit to restrict the scope of the appeal only to substantial questions of law, being a welfare legislation. Unfortunately, the High Court

¹ 2006 (5) SCC 513

² 2017 (2) ALD 14 (SC)

has missed this crucial question of limited jurisdiction and has ventured to re-appreciate the evidence and recorded its own findings on percentage of disability for which also there is no basis. The whole exercise made by the High Court is not within the competence of the High Court under Section 30 of the Act”.

11. In the facts and circumstances of the case, though it is not specified as a compensable disease as per Ex.B2 Circular, the learned Commissioner has taken a view on factual basis considering the hazardous conditions and nature of employment of the deceased as he was suffering with Bronchogenic Carcinoma. But as per the evidence of RW2 and the Government Notifications, Asbestosis and cancer of lungs are the diseases connected with mining operations. Asbestosis is a lung disease, people working in mining operations are at high risk of asbestosis leading to lung cancer. Therefore, considering the peculiar facts of the case, though the disease Bronchogenic Carcinoma is not specified as compensable disease and also considering the limitations in view of Section 30 of the Act as the amount has already been deposited pursuant to the orders impugned, considering the relationship of the deceased with the opposite party as employer being a Public Limited Company,

poor plight of the applicant, the appellant/opposite party is directed not to recover the said amount already paid/deposited though strictly in law and on facts the applicant is not entitled for any compensation as the same is not compensable disease. In that view of the matter and in view of the principles laid in the above decisions, the appeal is disposed of with a direction to the appellant not to recover the amount already deposited/ paid to the applicant.

12. In the result, this Civil Miscellaneous Appeal is disposed of directing the appellant/opposite party not to recover the amount already deposited pursuant to the orders impugned and the applicant is permitted/entitled to withdraw the same. In the circumstances of the case, there shall be no order as to the costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

A. VENKATESWHARA REDDY, J

Dated : 25-11-2022
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