

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

WEDNESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL MISCELLANEOUS APPEAL NO: 177 OF 2016

Appeal filed Under Section 30 of W.C. Act against the Order in W.C.No.74 of 2009 dated 09.12.2015 on the file of the Court of the Commissioner for Employee's Compensation and the Assistant Commissioner of Labour, Nalgonda.

Between:

The United India Insurance Company Limited, Divisional Office No.XI, Thirumala Towers, Malakpet, Hyderabad, Rep. by its Divisional Manager. (Opposite Party No.2 in WC.No.74 of 2009)

...APPELLANT/OP.2

AND

1. Rathla Ramkoti, S/o Badriya, Hindu, aged 45 years, Occ: Labourer, R/o Poolya Thanda, Chalakurthy Village, Peddavoora Mandal, Nalgonda District.
2. Rathla Hanumanthu, S/o Ramakoti, Hindu, aged 15 years, Occ: Student, R/o Poolya Thanda, Chalakurthy Village, Peddavoora Mandal, Nalgonda District.
3. Rathla Ramesh, S/o Ramakoti, Hindu, aged 14 years, Occ: Student, R/o Poolya Thanda, Chalakurthy Village, Peddavoora Mandal, Nalgonda District.
4. Rathla Vijaya, D/o Ramakoti, aged 13 years, Occ: Student, R/o Poolya Thanda, Chalakurthy Village, Peddavoora Mandal, Nalgonda District.
(RR No. 2 to 4 minors rep.by natural guardian is 1st Respondent)

...RESPONDENT/APPLICANTS

5. Ramavath Lalsing, S/o Watchya, Hindu, aged 49 years, Occ: Owner of Tractor & Trailer Bearing AP 24 W 5516 & 5517 R/o Poolya Thanda, Chalakurthy Village, Peddavoora Mandal, Nalgonda District.
(Opposite Party No.1 in W.C.No.74 of 2009).

...RESPONDENTS/OP.1

Counsel for the Appellant: SRI B. SURESH KUMAR

Counsel for the Respondent Nos.1 to 4: SRI S. ANNAPURNA

Counsel for the Respondent No.5: NONE APPEARED

The Court delivered the following: JUDGMENT

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.M.A.NO.177 of 2016

JUDGMENT:

The second opposite party in W.C.No.74 of 2009 before the Commissioner For Employees Compensation and Assistant Commissioner of Labour at Nalgonda i.e., The United India Insurance Company Ltd., is appellant in this Civil Miscellaneous Appeal and this appeal is preferred against the order dated 09-12-2015 in the above referred workman's compensation case, wherein, the learned Commissioner of Employees Compensation, awarded compensation to the applicants in the said case.

2. The respondents No.1 to 4 herein are applicants and respondent No.5 is opposite party No.1 in the said case. The Insurance Company challenged the order on the following grounds:

3. The order passed by the Commissioner for Employees Compensation is highly illegal, improper, unjust, arbitrary, contrary to law. The respondents/applicants failed to establish that Smt.Rathla Kamli, who herein after will be referred as deceased was in employment with the respondent No.5/opposite party No.1 and she worked as labourer for the respondent No.5.

The learned Commissioner ought to have seen that except the oral evidence of respondent No.1/applicant No.1, who was examined as AW.1, there is no corroboration to his evidence. No independent witness was examined in support of their claim. The respondents/claimants failed to establish the relationship of employer and employee between the deceased and respondent No.5 herein. In the absence of corroboration, the evidence of AW.1 ought not to have been believed for concluding that the deceased died during the course of employment with respondent No.5. The appellant further pleaded that the learned Commissioner ought not to have considered and relied upon the evidence of respondent No.5/opposite party No.1, in as much as his evidence is nothing but only Hearsay evidence. There was collusion between respondents No.1 to 4 and respondent No.5. The appellant further pleaded that the learned Commissioner ought to have appreciated the contentions of the appellant herein and held that in case of violation of terms and conditions of the policy and as the deceased was only gratuitous passenger, the insurance company has to be exonerated from the liability and the entire liability ought to have been fixed on the owner of the vehicle. The appellant further pleaded that the learned Commissioner did not consider the fact that the 1st opposite party

was examined as RW.2 and admitted that he did not file any record to show that the deceased worked on his tractor and that he was running the tractor for hire purpose thereby, the conclusions arrived by the learned Commissioner are incorrect and claim against this appellant herein ought to have been dismissed.

4. The appellant further pleaded that in the light of the admission from RW.2 that he has fixed Hydraulic Machine to his tractor and trailer for the purpose of loading and unloading the material, there was no necessity for him to engage the services of labour/coolie. Therefore, the question of deceased working as coolie on the tractor does not arise. But the learned Commissioner came to a wrong conclusion and awarded compensation by directing the appellant herein to pay the said amount thereby, the appellant sought for setting aside the order.

5. The learned counsel for the respondents/claimants has submitted that the learned Commissioner after discussing all the above issues passed a reasoned order. The learned Commissioner found that there was an employer and employee relation between the 1st opposite party and deceased. The death of the deceased as employee of respondent No.5 is also established. There is no dispute about the insurance obtained by respondent No.5 from the

appellant herein. Therefore, the learned counsel sought for dismissal of the appeal.

6. As could be seen from the material before this Court, it appears that respondents No.1 to 4 herein have filed the above referred workmen's compensation case on the ground that the deceased was on duty as a labourer on the tractor of respondent No.5 herein. On 15-03-2007, when she was proceeding on the said tractor for loading and unloading purpose and on the way at AMRP Flood Canal starting point, the driver of the tractor drove it in a rash and negligent manner and in a high speed, due to which the tractor and trailer fell in the Canal. As a result, the deceased suffered grievous injuries, her dead body was not found till the next day. Thereby, they have claimed that the deceased died in the course of employment with respondent No.5. Thereby, they sought for compensation from the owner as well as insurance company from which respondent No.5 obtained insurance policy for the said tractor and trailer.

7. Both the respondents made their appearance before the Commissioner. Respondent No.5 herein filed counter wherein, he has admitted the ownership over the tractor, employment of the deceased as labourer, admitted the death of deceased while she was working on his tractor, as the tractor fell in a Canal due to

the rash and negligent driving by the driver. However, he has claimed that he need not pay any compensation to the respondents since he has obtained the policy from the appellant herein.

8. The second opposite party i.e., appellant herein filed separate counter denying material averments made in the application. The appellant further pleaded that the compensation claimed by the applicants is highly excessive, exorbitant and respondents are not entitled to such compensation thereby, sought for dismissal of the application.

9. The learned Commissioner framed three (3) issues for enquiry. During the enquiry, the 1st applicant i.e., respondent No.1 herein was examined as AW.1. He has marked Exs.A1 to A4 namely certified copy of F.I.R., against the tractor, certified copy of charge sheet registered against the driver of the tractor, certified copies of inquest report and post-mortem report of the deceased. The appellant herein examined its Senior Branch Manager as RW.1. The respondent No.5 herein was examined as RW.2. The appellant marked copies of insurance policy, registration certificates of tractor and trailer and driving license of the driver.

10. Now the point for consideration in the appeal is :

Whether the learned Commissioner failed to consider the objections raised by appellant herein and passed an order thereby, it is liable to be set aside as prayed for ?

11. The appeal is filed mainly on three (3) grounds. The appellant has pleaded that there was no evidence to believe that the deceased was working as labourer on the tractor thereby, there is no evidence to believe the employer and employee relationship between the deceased and owner of the vehicle. Since the owner of the tractor arranged Hydraulic Machine in a tractor, there was no necessity to engage any coolie for the alleged purpose of loading or unloading. Therefore, the question of his engaging the deceased as coolie on his trailer does not arise. The deceased was only a gratuitous passenger, who was allowed to travel by sitting in the trailer. Therefore, the respondents/applicants are not entitled to compensation.

12. I have perused the order passed by the Tribunal. The respondents/applicants have examined AW.1 and marked four (4) documents which would clearly shows that there was an accident while the deceased was traveling in the tractor and when the tractor trailer combination fell in a Canal due to the rash and negligent driving by the driver. The contents of the First Information Report, charge sheet clearly shows and demonstrates

the accident which resulted the fall of tractor in a Canal and that the dead body of the deceased was found on the next day. The inquest and post-mortem report further proves that the death of the deceased was due to the injuries caused to her in view of drowning in the canal. The evidence of AW.1 is further strengthened by the evidence of AW.2, who is owner of the vehicle.

13. The learned counsel for the appellant has submitted that there was collusion between 1st opposite party and respondents/applicants. The cross-examination of AW.2 which is by way of suggestions may not establish the alleged collusion. It may be a fact that he has arranged a Hydraulic Machine but that itself will not establish that there was no necessity to engage coolies for loading or unloading. The oral evidence of AWs.1 and 2 supported by documents marked as Exs.A1 to A4 established the employment of the deceased as well as her death in the accident. Thereby, the contention of the appellant cannot be accepted.

14. The learned Commissioner while deciding the application placed reliance on a Judgment reported in "**P. Narasimha Reddy and others v. K.Ramachander and another¹**", and was of the opinion that :

¹ 2004 (4) ALT 511

"There is no necessity for a written order of employment to apply or attract the provisions of workmen's compensation Act and on the basis of oral and documentary evidence, he has passed an order in favour of the respondents/applicants".

15. While relying on another Judgment reported in **2012 AAC 1587 (AP)**, wherein, it was held that :

"When the accident occurred in the course of employment, employer would be liable to pay compensation even though the driver did not possess valid license, in case there is a valid insurance policy existed at the time of accident".

16. The learned Commissioner accepted the contention of the respondents/plaintiffs. The evidence placed before the Court established that respondent No.5 obtained such an insurance policy from appellant herein. As such the learned Commissioner allowed the applications and directed both the opposite parties to pay the compensation. Therefore, there is nothing to interfere with the said findings, thereby, the appeal is liable to be dismissed.

17. In the result, the appeal is dismissed.

Consequently, Miscellaneous applications if any, are closed.
No Costs.

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SD/-K.SRINIVASA RAO
JOINT REGISTRAR

9/28/11/22
SECTION OFFICER

To,

1. The Commissioner for Employee's Compensation and Assistant Commissioner of Labour, Nalgonda. (with records)
2. One CC to Sri B. Suresh Kumar, Advocate [OPUC]
3. One CC to Sri S. Annapurna, Advocate [OPUC]
4. Two CD Copies
5. One Spare Copy

gbr



HIGH COURT

DATED: 07/09/2022

JUDGMENT

CMA.No.177 of 2016



DISMISSING THE CMA
WITHOUT COSTS

(b) MBC
1/10/24