

**THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU**

**CIVIL MISCELLANEOUS APPEAL No.537 OF 2006**

**JUDGMENT:**

Being aggrieved by the order of the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I at Hyderabad dated 03.11.2005, the 2<sup>nd</sup> opposite party in W.C.No.3 of 2005 has preferred this civil miscellaneous appeal challenging the said judgment by which the learned Commissioner directed the opposite 1<sup>st</sup> and 2<sup>nd</sup> opposite party therein to pay a sum of Rs.3,32,305/- towards compensation on account of the death of one S.Komaraiah to the respondents/applicants.

2. Respondent Nos.1 to 3 are wife and children of the said Komariah herein (herein after will be referred as deceased) and they filed an application on 15.10.2004 before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour claiming an amount of Rs.3,00,000/- towards compensation on account of the death of the deceased in a road accident. According to the averments made in the said application, it was the case of

respondent Nos.1 to 3 herein that the deceased was working as labourer on a tractor owned by the 1<sup>st</sup> opposite party i.e., respondent No.4 herein. On 07.05.2001 the deceased was working on the said truck as labourer to unload the material. At about 07:00 p.m. on the same day, when the tractor reached Dharmasagar, a cyclist suddenly came in the opposite direction. The driver with a view to avert the accident, applied sudden breaks but lost control over the vehicle, due to which the trailer of the vehicle overturned. The deceased who was in the trailer fell down and died on the spot.

3. A complaint was presented before the police Dharmasagar basing on which a case was registered against the driver in Crime No.78 of 2002 for the offence under Section 304-A and 337 of Indian Penal Code. The respondent Nos.1 to 3 have claimed that the deceased was on the employment of respondent No.4/1<sup>st</sup> opposite party and he died during the course of employment. The 4<sup>th</sup> respondent obtained insurance policy against the said tractor trolley from the appellant herein. Thereby, they filed an application against both opposite parties. Both the

parties i.e., respondent No.4 and the appellant herein appeared before the Commissioner and filed their respective counters. The 4<sup>th</sup> respondent herein admitted the employment of the deceased as labourer on his tractor and further stated that he was paying Rs.2,000/- per month towards salary and he further stated that the vehicle was duly insured with the appellant herein. Whereas the appellant filed a separate counter denying all the material averments of the application including the employment of the deceased, his age, earnings etc., and prayed for dismissal of the application.

4. The learned Commissioner has framed 5 issues for trial. In order to prove their claim, the respondents 1 to 3 have examined the wife of the deceased as AW1 and marked Ex.A1 to A9. The appellant herein has examined Rw1, but marked no documents. Learned Commissioner having considered the entire evidence and also the arguments advanced by the parties, allowed the claim of the respondent Nos.1 to 3/applicants and awarded compensation as indicated above.

5. The 2<sup>nd</sup> opposite party i.e., Insurance Company filed the present appeal on the ground that the learned Commissioner committed an error while awarding the compensation to the respondents. The Commissioner ought to have seen that the deceased is none other than the son of the 1<sup>st</sup> opposite party, thereby, there is no Employee and Employer relation between the deceased and 4<sup>th</sup> respondent herein. The deceased was not a workman within the meaning of the Workmen's Compensation Act. There is no evidence to believe that the deceased died in an accident during the course of employment with 4<sup>th</sup> respondent. The appellant further pleaded that the Commissioner ought to have seen that except oral evidence of wife of the deceased, there is no evidence to show that the deceased was working as labourer on the tractor trailer of 4<sup>th</sup> respondent. Therefore, the Commissioner ought to have dismissed the application. The findings given by the Commissioner are based on surmises without any supporting evidence. Thereby, the appellant sought for setting aside the order of the Tribunal.

6. Heard both parties.

7. Learned standing counsel for the appellant herein has submitted that there is no dispute about the relationship between the parties. The deceased is none other than the son of respondent No.4. Respondent Nos.1 to 3 are daughter-in-law and grand children of respondent No.4. The driver of the vehicle is also a close relative of the deceased. There is no evidence to believe that the deceased was working as labourer and he died during the employment. Therefore, he cannot be treated as workman within the meaning of the Workmen's Compensation Act. Therefore, the Commissioner ought to have dismissed the claim, as such he sought for setting aside the order by which the appellant herein was directed to pay compensation to the respondent Nos.1 to 3/applicants. In support of the said contention learned counsel for the appellant relied on the following judgments:

1. 2007 (3) Scale 364 between *Gottumukkala Appala Narsimha Raju vs. National Insurance Company Limited.*
2. 2019 ACJ 144 between *United India Insurance Company Limited vs S.K.Imam and another.*

3. 2006 (2) ACC 692 between National Insurance Company Limited vs Sabia Begum.

8. On the other hand, learned counsel for respondent Nos.1 to 3 has placed reliance on judgments:

1. 2014 ACJ 480 between T.S.Shylaja vs Oriental Insurance Company Limited and another.
2. 2011 (3) ALD 417 between United Insurance Company Limited, Secunderabad vs. N.Bujji @ Manemma and another.
3. 2021 (3) ALD 227 (AP) between Orientl Insurance Company Limited, Tanuku vs. Matlapudi Nagaraju and another.
4. 2019 ACJ 29 between North East Karnataka Road Transport Corporation vs. Sujatha.

9. Learned counsel for respondent Nos.1 to 3/applicants has submitted that there is no bar for a father to employ his own son on his tractor, there is no evidence before the Court to believe that the deceased and respondent Nos.1 to 3 are living along with respondent No. 4. The oral evidence of Aw1 coupled with F.I.R. and other documents clearly shows that as to how the incident occurred and it also proves that the deceased was working

as labourer for loading and unloading on the tractor trolley owned by respondent No.4. Therefore, he prayed for dismissal of the appeal.

10. Now the point for consideration is:

*Whether the deceased was not an employee under respondent No.1/1<sup>st</sup> opposite party and whether the order by which the appellant/2<sup>nd</sup> opposite party was directed to pay compensation is liable to be set aside?*

11. **POINT:**

It is true there is no dispute about the relationship between the parties. According to the evidence of Aw1 and other pleadings, it was the case of the respondent Nos.1 to 3 that the deceased was working as labourer on the tractor trolley owned by his father. The 1<sup>st</sup> opposite party filed counter stating that he has employed his son to work on the tractor by payment of monthly wages. The same thing was mentioned in the report lodged with the police and in other record.

12. In the judgment relied on by the appellant between

**Gottumukkala Appala Narsimha Raju vs National**

**Insurance Company**<sup>1</sup>, the Hon'ble Apex Court was pleased to observe that it is wholly absurd to suggest that the husband would be a workman of his wife in absence of any specific contract.

13. However, in the case on hand apart from the oral evidence of Aw1, the averments made in the counter and other documents namely, F.I.R., Charge sheet etc., goes to show that the deceased was working on the tractor on monthly basis. The inquest report and other documents would show that he died while working as labourer of respondent No.4 on his tractor when the trolley overturned due to sudden application of breaks by the driver of the tractor.

14. In the other two judgments also, it was held that when there is no evidence to prove that the deceased was employed under his own father, no compensation can be awarded. Whereas in the judgment relied on by the respondent i.e., **North East Karnataka Road Transport Corporation vs. Sujatha**<sup>2</sup> held that whether there existed

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<sup>1</sup> (2007) 13 scc 446

<sup>2</sup> 2019 11 SCC 514

any relationship of employee and employer, what was the age and monthly salary of employee, how many are the dependants of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident etc., are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue/s his employer to claim compensation under the Act. The aforementioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recovered thereon are regarded as the finding of fact”.

15. In another judgment between **United Insurance Company Limited vs. Bujji @ Manemma and another**<sup>3</sup>, the erstwhile High Court of Andhra Pradesh was pleased to observe that merely because the deceased was son of

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<sup>3</sup> 2010 SCC ONLINE AP 667

owner of the tractor trolley, it cannot be said that relationship of employee and employer between them did not arise and hence the deceased was not a workman within the meaning of Section 2(1)(N). There is no bar under the Act to say that father should not employ his son, as such the appeal by the Insurance Company against the order of the Commissioner making liable along with respondent No.2 was dismissed.

16. In the other judgment between **T.S.Shylaja vs Oriental Insurance Company Limited and another**<sup>4</sup> the Hon'ble Apex Court was pleased to observe that "when the Commissioner for Workmen's Compensation Act appraised the evidence adduced before him and recorded a finding of fact that the deceased was indeed employed as driver by the owner of the vehicle, no matter the owner happened to be his brother. The finding could not be likely interfered with or reverse by the High Court. In this case, the learned Commissioner gave a finding based on the evidence that there is no bar for the 4<sup>th</sup> respondent herein to employ his son and came to conclusion that the deceased died while

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<sup>4</sup> 2014 2 SCC 587

working as labourer on the tractor owned by 4<sup>th</sup> respondent which is insured with the appellant herein. In view of the above binding precedents, it can be held that there is no bar for a father to employ his son as collie/employee on his tractor. The evidence including the documents proves the said relation between the owner of the tractor and deceased. There is evidence to believe that the employee died during the course of such employment. Therefore, there are no grounds to interfere with the said finding.

17. In the result, the appeal is dismissed.

18. As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

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**JUSTICE SAMBASIVA RAO NAIDU**

Date: 14.10.2022  
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