

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

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY TWO

**PRESENT
THE HONOURABLE SMT JUSTICE P.SREE SUDHA**

C.M.A. NO: 231 OF 2010

Appeal under Section 30 of W.C.Act, against the Judgment/ decree in WC.No.12 of 2004 dated 22/01/2006 on the file of the Court of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Khammam.

Between:

The New India Assurance Company Limited, Rep. by its Branch Manager, Old Club Road, Khammam

...APPELLANT/ OPPOSITE PARTY

AND

1. Orusu Rajeswari, W/o Venkaiah Occ: Housewife
 2. Orusu Vamshi Krishna, S/o Venkaiah aged 4 years, Occ: Student
 3. Orusu Ramya Sree, D/o Venkaiah aged 2 years, Occ: Dependant
 4. Orusu Lingamma, W/o Swamy Occ: Housewife
 5. Orusu Swamy, S/o Venkaiah Occ: Coolie
- Applicant Nos.2 and 3 being minors rep. by their Mother and natural guardian Orusu Rajeswari)
(R5 died for LR's RR 1 to 4 already on record, vide Court Order dated 23/03/10)
(R5 disd. for default vide Court Order dated 6/8/09)
(R5 restored vide Court Order dated 23/03/2010 in CMA MP 578/10)
All are R/o. Vinoba Nagar, Julurpad Mandal, Khammam District

...RESPONDENTS/ APPLICANTS

CMAMP. NO: 1657 OF 2006

Petition filed under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay of all further proceedings including execution of the order dated 22.1.2006 in WC No.12/2003 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Khammam.

For the Appellant : SRI P.BHANU PRAKASH, Advocate

For the Respondent Nos.1 to 3 : SRI CH.JANARDHAN REDDY, Advocate

The Court delivered the following: JUDGMENT

THE HON'BLE JUSTICE P. SREE SUDHA

CIVIL MISCELLANEOUS APPEAL NO.231 OF 2010

ORDER:

Challenging the order dt.22.01.2006 passed in W.C. No.12 of 2004 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Khammam, seeking to set aside the order, this Civil Miscellaneous Appeal is filed by the New India Assurance Company Ltd., Khammam/opposite party.

2. The facts of the case in a nutshell are that, as per the instructions of respondent/applicant No.1, on 25.05.2001, the jeep was engaged by a marriage party and were proceeding towards Tiruvur from Kallur to get chicken and by the time they crossed Muggu Venkatapuram village, an unknown vehicle stopped on the middle of the road without having any parking lights and other precautions and the deceased unable to control the speed, dashed the lorry from its behind. Thereby, the jeep turned turtle and the deceased sustained multiple grievous injuries all over the body and immediately, he was shifted to a private Hospital at Kallur and then the deceased was admitted in Government Hospital, Penubally,

where he succumbed to injuries on the same day. The respondents/applicants filed an application for grant of compensation of Rs.3,00,000/-. After adducing evidence and marking exhibits, the learned Assistant Commissioner granted an amount of Rs.2,56,498/- towards compensation. Aggrieved by the said order, the New India Assurance Company Ltd., Khammam/opposite party preferred this Appeal.

3. Heard arguments of learned counsel for the appellant/opposite party and learned counsel appearing for the respondents/applicants.

4. Learned counsel for the appellant/opposite party contended that the deceased Venkaiah is the husband of respondent/applicant No.1. On 25.05.2001 at about 05:00 a.m., deceased Venkaiah, who was on duty as a driver of jeep bearing Registration No. AP-7T-4373 belonging to Orsu Rajeswari i.e. respondent/applicant No. 1, met with an accident while he was on duty and died. They mainly contended that there is no employer and employee relationship between the deceased and the respondent/applicant No.1, and that the deceased has not died during the course of employment. They further stated that the deceased driver was driving his own jeep and was involved in the accident. In fact,

the jeep is in the name of his wife respondent/applicant No.1, as such, he cannot be considered as independent person employed by the owner.

5. Learned counsel appearing for respondents/applicants contended that as the Assistant Commissioner has rightly passed the order, it needs no interference by this Court.

6. A perusal of the order passed by the Assistant Commissioner of Labour shows that jeep bearing No. AP-7T-4373 belongs to one Orsu Rajeshwari/first applicant. While her husband driving the jeep on 25.05.2001, he met with an accident and died. Insurance Company specifically denied the relationship of employer and employee and also contended that they are not liable to pay compensation. The applicants have not filed any other documents except Ex.A1 to A4. But, the Assistant Commissioner framed an issue regarding the fact, whether the driver of the jeep was engaged by the first applicant as on the date of accident. But, considering the said documents and the evidence of PW.1, the Assistant Commissioner wrongly arrived to the conclusion that there was employer and employee relationship between PW.1 and deceased.

7. The learned counsel for the respondents/applicants contended that the jeep was engaged by the marriage party and while proceedings towards Tiruvur, dashed an unknown vehicle stopped on the middle of the road without having parking lights, the jeep turned turtle and thus, the driver sustained injuries and died. But, there is no evidence on record to show that jeep was hired by the marriage party and the driver of the vehicle was employed by the respondent/first applicant and thus, the petitioners failed to prove the employer and employee relationship and it cannot be said that he died during the course of employment and the accident arose out of the employment. As the petitioners failed to prove above aspects, they are not entitled for any compensation. But, the Assistant Commissioner erred in appreciating the facts properly and granted compensation and it is liable to be set aside.

8. Accordingly, the Civil Miscellaneous Appeal is allowed by setting aside the order of the Assistant Commissioner in W.C. No.12 of 2004 dated 22.01.2006. There shall be no order as to costs. Insurance Company is at liberty to withdraw the amount already deposited by them.

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

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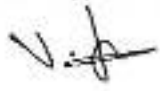
Sd/-K.SRINIVASA RAO
JOINT REGISTRAR

SECTION OFFICER

To

1. The Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Khammam. (with records)
2. One CC to Sri P.Bhanu Prakash, Advocate (OPUC)
3. One CC to Sri Ch.Janardhan Reddy, Advocate (OPUC)
4. Two CD Copies
5. One Spare Copy

Kj.



HIGH COURT

DATED:17/03/2022



ORDER

CMA.No.231 of 2010

ALLOWING THE CMA WITHOUT COSTS.

⑥ VLV
27/6/22