

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL MISCELLANEOUS APPEAL NO.643 OF 2008

JUDGMENT:

The appellant/opposite party has filed this Civil Miscellaneous Appeal assailing the orders dated 10.05.2007 in W.C.No.96 of 1995 before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Mahabubnagar.

2. This application in W.C.No.96 of 1995 was filed by the applicants, who are the parents of the deceased workman viz. Katravath Ramla, who died due to the injuries sustained in the accident, under the provisions of Workmen's Compensation Act, 1923 (for short 'the Act') claiming compensation for the death of the deceased in the course of employment under opposite party as labourer on the Tractor No.AP 22/883 of the opposite party.

Brief facts:

3. The applicants have filed this application claiming compensation alleging that the deceased was employed as a labourer on the tractor of the opposite party. That on

23.09.1994 at about 02.45 P.M. while the deceased and another person viz. S.Ramulu were in the process of digging the mud in the pit in the limits of Yenugonda Village, heap of mud fell on the deceased due to which the deceased died at the spot and his co-worker Ramulu sustained injuries. The police have registered a case in Crime No.180 of 1994, took up the investigation. It is stated that the deceased was aged about 20 years, he was getting wages @ Rs.100/- per day and accordingly, claimed Rs.2,00,000/- towards compensation.

4. On receipt of notice, the opposite party has filed a counter denying the accident and the relationship as employer and employee and also denying the fact that whether he is not aware that whether a crime was registered or not. It is further stated by the opposite party that he is no way concerned with the said Tractor bearing No.AP 22/883 and that false application is filed by the applicants against him.

5. During enquiry, on behalf of applicants, the first applicant is examined as AW1 and a labourer, who was working on the tractor of opposite party along with the deceased is examined as AW2. In their evidence, Exs.A1 to A3 documents

are marked and whereas, on behalf of opposite party, he himself got examined as RW1. The Tribunal below, after careful appreciation of entire oral and documentary evidence, stated above, held that the deceased died due to the injuries sustained in the accident that occurred on 23.09.1994 in the course of his employment as labourer on the Tractor bearing No.AP 22/883 in the course of employment of opposite party and accordingly, the opposite party was directed to pay an amount of Rs.1,04,982/- towards compensation including Advocate Fee and Stamp Fee.

6. Feeling aggrieved by the said orders in WC No.96 of 1995 the opposite party has filed this civil miscellaneous appeal on the following grounds:

(a) The order of lower Tribunal is illegal as the very compensation is claimed against unconcerned person, who is not the owner of the tractor nor in any way concerned with the accident.

(b) The applicants and the learned Commissioner have erred in not taking steps for impleading the owner of the tractor inspite of specific plea by the appellant that he is not the owner of the tractor.

(c) The learned Commissioner erred in believing Exs.A1 to A3 on the ground that there is no evidence on behalf of appellant. There is no documentary evidence to show that the appellant herein is the owner of the tractor or he has engaged the deceased person.

7. Heard learned counsel for the appellant. None appeared on behalf of respondents/applicants. Having regard to the fact that this civil miscellaneous appeal is pending since the year 2008, it is treated as heard.

8. In the light of contentions raised by learned counsel for the appellant/opposite party and the material available on record, the following points would arise for consideration.

(i) *Whether the applicants are able to establish that the opposite party is the owner of the said tractor and there exists employer and employee relationship between the opposite party and the deceased?*

(ii) *Whether the order impugned is sustainable?*

Point Nos.(i) and (ii) :

Since all the points are interconnected, to avoid repetition, they are answered together as under:

9. The case of the applicants is that their son, the deceased herein was employed on the Tractor No.AP 22/883 in the employment of opposite party and while so, on 23.09.1994 in the process of digging mud in the pit in the limits of Yenugonda Village, heap of mud fell on the deceased and died at the spot. To substantiate their claim, the applicant No.1 himself got examined as AW1. He filed his evidence affidavit in lieu of chief-examination. Exs.A1-FIR, A2-Inquest Panchanama and A3-Post-mortem Report were marked in his evidence. In the cross-examination this witness stated that in all six persons were proceeding on the tractor for labour work and that the opposite party resides at Mahabubnagar, he has not filed RC Book of the tractor. He denied the suggestion that the deceased was not employed by the opposite party but a group of workers were digging a pit, he also denied that the deceased was only paid Rs.30/- per day as wages.

10. The applicants have examined an independent witness, who is another labourer, working under the opposite party as AW2. This witness has supported the entire case of the applicants and stated that on 23.09.1994 the deceased along

with himself and other labourers were engaged on the Tractor No.AP 22/883 by the opposite party and at that time, the deceased and S.Ramulu were digging the mud and the other labourers were loading it, all of a sudden, heap of mud fell on the deceased and he sustained injuries, died at the spot. Though AW2 is cross-examined at length, his entire evidence in the cross-examination of opposite party remained consistent, he has clearly stated that he does not know about the RC Book but the opposite party used to employ them as labourers on every day. He denied the suggestion that the deceased was not employed by the opposite party.

11. In support of his claim, the opposite party himself got examined as RW1, filed his evidence affidavit in lieu of chief-examination. In his evidence affidavit, for the first time, it was brought on to record that at the request of Assistant Sub-Inspector of Police, Mr.Ramulu, who is known to him and who is his neighbour, he has signed on some papers, which were scribed by others and his signatures were obtained at the time of death of deceased and at the time of accident but the ASI of Police has not revealed anything with reference to accident.

12. Be it stated that though the opposite party has denied the entire incident as RW1 in his evidence in chief-examination he has categorically stated that Mr.Ramulu, ASI of Police, Mahabubnagar is known to him and he has obtained his signatures on some papers in connection with death of some persons, but he did not reveal the matter to him. Whereas, Ex.A1 is the true extract of the First Information Report in Crime No.180 of 1994 of Mahabubnagar Police Station. A careful reading of this document shows that it is the opposite party, who gave a report to the police on 23.09.1994 informing that the deceased workmen along with other labourers of Yenugonda Village went to mud pit near the fields of D.Venkataiah, while they were digging mud and loading it into the vehicle, heap of mud fell on the deceased and another worker. The other persons, who were loading the mud, have removed the deceased from the debris and got him admitted in the hospital, the deceased died at about 09.45 P.M. The police have received this complaint from the opposite party and registered a case in Crime No.180 of 1994.

13. Ex.A2 is copy of Inquest Panchanama, conducted over the dead body of the deceased, wherein, the deceased was described as labourer. The opposite party is one of the panch witness to Ex.A2 inquest panchanama and the panch witnesses have opined that the deceased died when heap of mud fell on him while digging mud and loading the same into the tractor. Ex.A3 is the post-mortem examination report. The doctor has opined the cause of death. The contents of Exs.A1 and A2 are also supported by the evidence of independent witness AW2. I do not find any reason to disbelieve the contents of Exs.A1 and A2 and the oral evidence of AW1 and AW2.

14. Whereas, the opposite party has conveniently changed his stand from the time of filing counter to the time of giving his evidence as RW1, particularly, a perusal of Exs.A1 and A2 would establish that he is the employer of the deceased and that the deceased along with AW2, Ramulu and others were employed for loading the mud. The deceased and Ramulu were digging the mud and the other labourers were loading the same into the tractor, at that time heap of mud fell on the deceased and that the deceased died. The deceased was declared dead at

about 09.45 P.M. in the hospital as per the contents of Ex.A1. I do not find any reason to disbelieve the contents of Exs.A1 and A2 and the oral evidence of AWs.1 and 2.

15. Similarly, the age of the deceased is mentioned as 20 years at the time of accident. It is also found in Exs.A2 and A3 inquest report and PME report, father of the deceased, who examined as AW1 has also testified the same. Though the applicants have claimed that the deceased was earning Rs.100/- per day, it was disputed by the opposite party, and thereby the Tribunal below has relied on G.O.Ms.No.71, W.D.C.W. & L (Lab-II), Department, dated 16.04.1991 wherein the basic wage of the labourer is mentioned as Rs.675/- and V.D.A. payable notified by the Commissioner of Labour of Labour at the relevant time of was Rs.256/-. Thus, the total wages were taken as Rs.931/- per month and accordingly, considering the age of the deceased, multiplier 224 was applied and the compensation was arrived at Rs.1,04,272/-. Accordingly the Tribunal below has awarded Rs.1,04,982/- including Rs. Rs.210/- towards Stamp Fee and Rs.500/- towards Advocate Fee to be payable by the opposite

party to the applicants, who are the parents of the deceased workmen.

16. Be it stated that the learned counsel for the appellant opposite party has filed Form No.24 B Register of Motor Vehicle showing that the opposite party is nothing to do with the said vehicle. But no such application is filed under Order 41, Rule 27 of CPC for reception of any additional evidence. No efforts were made before the Tribunal below for filing such documents either in original or as photocopy. Accordingly, I am not inclined to look into such material which is not made part of the record.

17. Therefore, on a overall consideration of the entire material available on record, in view of the evidence of AWs.1 and 2 and the contents of Exs.A1 to A3, I hold that the applicants are able to establish that the deceased was under the employment of opposite party at the relevant time and he died on 23.09.1994 in the course of employment under the opposite party and he is responsible for payment of compensation. I do

not find any irregularity in the findings recorded by the Tribunal below and it does not warrant any interference by this Court.

18. In the result, this Civil Miscellaneous Appeal is dismissed confirming the orders dated 10.05.2007 in W.C.No.96 of 1995 before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Mahabubnagar in its entirety. The applicants/parents of the deceased workmen are entitled for withdrawal of total amount of compensation of Rs.1,04,982/- together with interest on the amount deposited before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Mahabubnagar as per the orders impugned. In the circumstances of the case, there shall be no order as to the costs. Consequently, miscellaneous applications, if any pending, shall stands closed.

A.VENKATESWHARA REDDY, J

Dated : 15-11-2022
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