

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

**WEDNESDAY, THE TENTH DAY OF AUGUST
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL MISCELLANEOUS APPEAL NO: 408 OF 2022

Appeal Under Section 30 of W.C. Act against the Judgment/Decree in W.C. No. 17 of 2014 dated 28/09/2015 on the file of the Court of the Commissioner for Employees and Compensation and Assistant Commissioner of Labour-III, Sri. T. Anjaiah Karmika Sankshema Bhavanam, R.T.C. cross Roads, at Hyderabad.

Between:

United India Insurance Company Ltd, Church Building, Posnett Bhavan, Tilak Road, Ramkote, Hyderabad.

...APPELLANT/2ND OPPOSITE PARTY

AND

1. Gummula Renuka, w/o Late Gummula Laxmi Rajam @ G.Raju, aged 26 years, R/o, Bowenpally, Hyderabad

...RESPONDENT/APPLICANT

2. ASHOCON Systems, represented by M.Satyanarayana Reddy, aged: Major, Occ. Employer, R/o.H.No.17-3-235, Dwarakanagar, Godavarikhani, Karimnagar District.

...RESPONDENT/1ST OPPOSITE PARTY

Counsel for the Appellant : SRI. NISARUDDIN AHMED JEDDY

Counsel for the Respondent No.1 : SRI. SUBBAGARI SUDARSHAN REDDY

Counsel for the Respondent No.2 : NONE APPEARED

The Court made the following: JUDGMENT

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.M.A.408 of 2022

JUDGMENT:

Being aggrieved by the Order dated 28-09-2015 in W.C.No.17 of 2014 on the file of Commissioner for Employees Compensation and Assistant Commissioner of Labour-III, the appellant who was shown as 2nd opposite party in the above referred W.C.No.17 of 2014, had filed the present C.M.A. with a prayer to set aside the said Order. The Commissioner by the above stated Order directed the opposite party 1 and opposite party 2 to pay an amount of Rs.6,47,415/- with costs etc., to the applicant therein.

2. One G.Renuka, the 1st respondent herein was applicant in the said case and she filed it before the Commissioner for compensation of Rs.10,00,000/- under the provisions of Employees Compensation Act 1923, on account of death of her husband Gummula Laxmi Rajam, who herein after will be called as deceased, in a road accident. The 1st opposite party was the employer of the deceased and 2nd opposite party, the appellant

herein is Insurance Company from whom opposite party 1 obtained Insurance Policy for his lorry bearing No.AP 29TA 4417.

3. She has claimed that the deceased was working as driver on the lorry of opposite party 1. On 29-08-2012, he was on duty as driver on the said lorry, he went to Devapur to unload ash and after unloading the ash, he returned to the Village, but on the way he met with an accident and died on the spot while he was on duty as employee of 1st opposite party. As such she sought for an amount of Rs.10,00,000/- from both the respondents.

4. Even though, both the opposite parties 1 and 2 appeared before the Commissioner, opposite party 1 did not file any counter, therefore, he was set *ex parte*. The 2nd opposite party filed counter disputing all the averments including the employment of deceased with opposite party 1 with the deceased, manner of accident, and also claimed that the deceased was not having valid and effective driving license with transport endorsement. Therefore, sought for dismissal of the application.

5. The applicant was examined as AW.1 and she has marked Exs.A1 to A10. The 2nd opposite party has examined RW.1 and marked Ex.B1. The learned Commissioner having considered the oral and documentary evidence of both parties and

having heard both parties, came to the conclusion that the applicant was able to prove her claim, thereby passed order which is impugned in the present appeal.

6. I have heard both parties.

7. The present appeal is filed on the grounds that the 2nd opposite party is not liable to pay any compensation to the 1st respondent/applicant, the death of deceased was not during the course of employment of the deceased with opposite party 1, the appellant is not liable to pay interest from 30-09-2012, the death of the deceased was not covered by the policy and as such sought for setting aside the Order by which the appellant was directed to pay compensation to the 1st respondent/applicant.

8. Now the point for consideration is :

Whether the Order of Commissioner fixing responsibility on the appellant herein to pay compensation to the 1st respondent/applicant is liable to be set aside ?

9. It is true except the evidence of AW.1, no other witness was examined on behalf of the applicant. However, she has marked Exs.A1 to A10. The respondent/applicant has claimed that her husband was working as driver on the lorry of opposite party 1, and he died while he was on duty when he met with an accident on 29-08-2012. As per Exs.A1 to A10, it is very clear

that soon after the accident, a compliant was lodged at Srirampur police station and the same was registered as Cr.No.92/2012. The police have examined the material witnesses, conducted a panchanama at the scene of offence, and also conducted inquest on the dead body of the deceased and referred the dead body for post-mortem. The crime vehicle was inspected by Motor Vehicles Inspector and soon after the completion of investigation, the police have filed Final report. As per the observations made by the learned Commissioner, it appears that these documents established the employer and employee relation between opposite party 1 and deceased, the relationship of AW.1 with the deceased and how the accident occurred. The report of Motor Vehicles Inspector who has inspected the crime vehicle further strengthen her claim.

10. It is also clear from Para 8 of the Order that RW.1, who was examined on behalf of the appellant herein that Ex.B1 is valid policy obtained by opposite party 1 for the crime vehicle, and opposite party 1 has paid additional premium to cover three employees. RW.1 failed to say as to how the accident occurred and it was not his case that the cleaner of the vehicle drove the lorry. The learned Commissioner relied on the Judgment reported

in 2004 (3) TAC 119 (AP), whereas the Hon'ble High Court observed that even if the driver allowed the cleaner of the vehicle drive without the knowledge of the owner, the insurer cannot avoid its liability to pay the compensation. The facts of the case on hand are identical with the case relied on by the learned Commissioner. The learned Commissioner while discussing the oral evidence of AW.1 and RW.1, as well as the documents marked as Exs.A1 to A10, came to the conclusion that the husband of the 1st respondent/applicant died while he was on duty as driver on the lorry of opposite party 1, thereby, granted compensation as referred above. Therefore, there are no merits in the appeal as such, it is liable to be dismissed.

11. In the result, the appeal is dismissed.

Consequently, Miscellaneous applications if any, are closed.

No Costs.

//TRUE COPY//

SD/- K.SRINIVASA RAO
JOINT REGISTRAR

SECTION OFFICER

To,

1. The Commissioner for Employees and Compensation and Assistant Commissioner of Labour-III, Sri. T. Anjaiah Karmika Sankshema Bhavanam, R.T.C. cross Roads, at Hyderabad.
2. One CC to SRI NISARUDDIN AHMED JEDDY Advocate [OPUC]
3. One CC to SRI SUBBAGARI SUDARSHAN REDDY Advocate [OPUC]
4. Two CD Copies
5. One Spare Copy

KAR

Q

HIGH COURT

DATED:10/08/2022

JUDGMENT

CMA.No.408 of 2022



**DISMISSING THE CMA
WITHOUT COSTS**

(6) Copies

Sm
21/12/22