IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

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

PRESENT
THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL MISCELLANEOUS APPEAL NO: 1102 OF 2017

Appeal Under Section 30 of Workmen's Compensation against the Judgment/Decree E.C.No. 242 of 2015 dated 19-07-2017 on the file of the Court of the Commissioner for Employees' Compensation and Deputy Commissioner of Labour-I, at Hyderabad.

Between:

Reliance General Insurance Company Ltd., Hyd, rep. by its Divisional Manager, 4-3-327 to 337, Sagar Plaza, 4th Floor, Abids, Hyderabad.

...APPELLANT/OPPOSITE PARTY NO.2

AND

1. Mahbub Bee, W/o. Mohammed Lal Ahmed @ Md. Laloo Miya, Aged about 42 years, Occ: Household, R/o. H.No. 15/13/A/4, Sri Balaji Nagar Colony, Kukatpally, Hyderabad-72

..... RESPONDENT/APPLICANT

2. Mohammed Lal Ahmed,, S/o. Sattar, Age: Major, Occ: Business, R/o. H.No. 17-3-154, Karimabad, Muslim Colony, Warangal, Telangana State

...RESPONDENT/OPPOSITE PARTY NO.1

I.A. NO: 6 OF 2017(CMAMP. NO: 46211 OF 2017)

Petition 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 Vacate the interim stay granted in CMAMP No. 1900 of 2017 in CMA No. 1102 of 2017 dated 23-10-2017 by permitting the Respondent No.1 / Claimant to withdraw the deposited amount along with accrued interest

I.A. NO: 2 OF 2017(CMAMP. NO: 1900 OF 2017)

Petition 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 in pursuance of the order dated 19-07-2017 passed in E.C.No.242 of 2015 on the file of the Commissioner for Employees of Labour-I at Hyderabad.

Counsel for the Appellant:SRI. T **MAHENDER RAO**

Counsel for the Respondent No.1: **SRI. P RAMAKRISHNA REDDY**

Counsel for the Respondent No.2: **SRI. KOTA SUBBA RAO**

The Court made the following: **JUDGMENT**

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.M.A.No.1102 of 2017

JUDGMENT :

Being aggrieved by the order of Commissioner for Employees Compensation and Deputy Commissioner of Labour-I at Hyderabad in an Employees Compensation case vide E.C.No.242 of 2015 dated 19-07-2017 by which the application filed by one Mahbub Bee against 2nd opposite party for compensation was allowed, and by which the Insurance company which is shown as 2nd opposite party as well as the owner of the vehicle who is shown as 1st opposite party were jointly made liable to pay a sum of Rs.8,47,797/- with costs and interest, the present appeal is preferred by the 2nd opposite party i.e., insurance company. The parties are referred to as they are shown in the said E.C.No.242 of 2015.

2. According to the averments made in E.C.No.242 of 2015 and as per the record available in the present appeal one Mohd. Sabeer Pasha @ Md. Shabeer, who herein after will be referred as deceased was the son of applicant and 1st opposite party. The sole applicant has filed E.C.No.242 of 2015 against her husband and also against the insurance company and sought for compensation for the death of said Shabeer in a road accident.

But she did not disclose her relation with 1st opposite party in the application. As per the material averments made in the said case, it was the claim of applicant that her son was working as driver of a lorry bearing No.AP 36U 8484 which belongs to the 1st opposite party and he was paid monthly wages of Rs.12,000/- apart from daily batha @ 400/-. The applicant has claimed that on 01-11-2015, the deceased was on duty as driver on the above said lorry. He was proceeding from Warangal to Medchal with load of cotton seeds. At about 3.15 a.m., when he reached the outskirts of Gowraram on Rajiv Rahadari, the deceased parked his lorry and got down to check the air pressure of the tyres. After checking air, the deceased was proceeding towards other end of the road for attending calls of nature, in the meantime, an unknown DCM van dashed him thereby, he received fatal injuries and died at the spot. The applicant has claimed that the deceased died due to the injuries caused to him in the accident that occurred out of and in the course of employment as a driver on the lorry of the 1st opposite party. It seems a complaint was lodged with police, Gowraram and a case in Crime No.104 of 2015 for the offence under Section 304(A) of I.P.C. has been registered.

3. The record shows that the 1st opposite party insured his vehicle with the 2nd opposite party. The applicant has filed the

application seeking compensation of Rs.10,00,000/- from both the opposite parties. After registering the application as E.C.No.242 of 2015, notices were sent to the opposite parties. The owner of the vehicle, who is none other than father of the deceased did not choose to contest the petition and was set *ex parte*.

4. The 2nd opposite party i.e., appellant herein opposed the application, filed a counter stating that the deceased was not an employee on the above said lorry, no such accident occurred as claimed by the applicant. The 2nd opposite party while denying other averments of the application namely age of the deceased, wages as claimed by the applicant, issuance of the insurance policy on the lorry, the 2nd opposite party has further pleaded that soon after the accident, the 1st opposite party, who was under the obligation to inform the accident to the insurance company did not do so. The compensation claimed by the appellant is highly excessive and while reserving the rights to file additional counter, sought for dismissal of the application.

5. During the course of enquiry, the 2nd opposite party filed an additional counter stating that the applicant and 1st opposite party are wife and husband. The deceased was their son and suppressing the details, they filed an application and sought for compensation by colluding with each other. There was no

employee and employer relationship between the deceased and 1st opposite party. In fact they are father and son, thereby, sought for dismissal of the application.

6. During the enquiry, the learned Commissioner framed three (3) issues in the following terms :

> 1. Whether the deceased was a workman within the meaning of the Act worked as a driver on the DCM lorry bearing No.AP 36U 8484 under the employment of the 1st opposite party and died due to the injuries sustained in the accident during the course and out of his employment?
> 2. If yes, who are liable to pay compensation to the dependants of the deceased?
> 3. What is the quantum of compensation entitled by the dependants of the deceased?

7. The applicant herein was examined as AW.1 and she has marked Exs.A1 to A8. The 1st opposite party did not choose to adduce any evidence. However, on an application filed by the 2nd opposite party, summons was sent to 1st opposite party and he was examined as RW.1 on behalf of the 2nd opposite party. They have also examined their employee as RW.2 and got marked the True copy of insurance policy in respect of above lorry as Ex.B1. The learned Commissioner having considered the arguments of both parties, oral and documentary evidence of the parties to the application allowed the application by fixing liability against both the opposite parties. Having not satisfied

with the order, the 2nd opposite party has filed the present appeal on the following grounds.

8. The learned Commissioner committed an error by fixing the liability against the appellant herein. The learned Commissioner failed to appreciate the actual relationship between the parties to the application, there was no employee and employer relationship between the deceased and his father. The learned Commissioner was not justified in fastening the liability on the insurance company without any proof about the relationship as employee and employer, the original driving license of the deceased was not produced. The 2nd opposite party further pleaded that originally the deceased was traveling in the insured lorry as an un-authorized passenger. When the lorry was stopped at the out-skirts of Gauraram, he was proceeding for answering calls of nature, an unknown DCM van dashed him causing fatal injuries due to which he died on the spot. At the time of accident, the original driver of lorry was very much present. Therefore, the learned Commissioner erred in directing the 2nd opposite party to pay compensation to the applicant. The learned Commissioner failed to see that there was collusion between the applicant and 1st opposite party, who are wife and husband and parents of the deceased. Therefore,

the learned Commissioner ought to have dismissed the application against the 2nd opposite party, thereby, he sought for setting aside the order.

9. I have heard both parties.

10. Now the points arose for consideration in the appeal are :

1. Whether the deceased was working as driver on the lorry of 1st opposite party who is no other than his father?
2. Whether the deceased died during the course of such employment?
3. Whether the learned Commissioner failed to appreciate the evidence correctly and came to wrong conclusion in awarding compensation fixing liability against the Insurance company (appellant)?
4. Whether the order of learned Commissioner is liable to be set aside?

11. The learned Standing counsel for the appellant has submitted that there is evidence on record to show that the son of applicant died in an accident which is no way related to the insurance policy or with alleged employment with 1st opposite party. But the applicant and her husband having colluded with each other filed application for compensation and 1st opposite party conveniently remained *ex parte*. There is no proof about the alleged employment. There is evidence on record to show that there was also another driver on the vehicle. The learned counsel has submitted that the learned Commissioner gave

unnecessary importance to the First Information Report which was preferred after deliberations and due to the collusion with police. The claim is fake, thereby, he prayed for setting aside the award.

12. On the other hand, the learned counsel for the applicant/claimant has submitted that there is no bar for a father, who is having a lorry to appoint his own son as driver. The record including the FIR and other documents categorically shows that soon after the accident, a complaint with all the details was presented to the concerned police. The police having completed investigation filed Final report. Simply because the applicant and insured are wife and husband, it cannot disqualify the applicant to claim compensation but there is ample evidence to believe that the deceased died while he was on duty as an employee of the insured thereby, he prayed for dismissal of the appeal.

13. The material averments and evidence of both parties as well as order the Court below clearly indicates that while filing the application, the appellant did not disclose her relation with the 1st opposite party. Simply she has claimed that her son was employed as a driver on the lorry owned by 1st opposite party and he died while on duty and sought for compensation.

However, the 2nd opposite party filed additional counter and filed a separate application to summon the owner of the lorry who did not choose to contest the case filed by the applicant. During the enquiry, she came with a different plea as if she had disputes with her husband thereby, she is living away from him but her son was working as driver on the lorry and as he died in a road accident under the employment of 1st opposite party, she claims compensation. In support of their contentions, both applicant and 2nd opposite party have placed reliance on certain Judgments with regard to which I will discuss in the coming paragraphs.

14. It is true there is no bar for a father, who is owner of the lorry to appoint his own son on the same lorry as a driver and he can avail the services of the son on the lorry but the evidence placed before the Court must prove all the averments including the employment, payment of salary, accident as alleged by the applicant and she must be able to prove that her son died while he was on employment of the owner of the vehicle and out of the employment. There is no explanation from the applicant as to why she did not disclose her relationship with the 1st opposite party at the time of filing the application. The evidence adduced by the applicant/claimant that her son

was having a valid driving license, she was dependant upon the earnings of her son. She has further deposed that she and her son separated from the 1st opposite party. In the cross-examination, it was elicited from the applicant that she has got three (3) children. She did not file the ration card or legal heir certificate. She denied the suggestion of the learned counsel for the insurance company that deceased was not working as driver, he was not earning Rs.12,000/- per month and a daily batha of Rs.400/- as claimed by her.

15. When the 1st opposite party was summoned and examined as RW.1, he deposed before the learned Commissioner that the applicant is a wife and deceased is his son. He denied the suggestion that the police records would disclose that the applicant and the deceased are also residing in the same address which he provided while obtaining the insurance policy from the 2nd opposite party. It was elicited from RW.1 that in the complaint filed before the police, they have shown one K.Yadagiri as driver of the lorry but he has further added that the deceased was driving the lorry at the time of accident. A suggestion was made to him that the deceased was not a driver on the vehicle but some Yadagiri was appointed and no accident as claimed by the applicant had occurred. According to RW.1, he

was living away from his wife and son due to the family disputes. He used to pay Rs.12,000/- per month apart from daily batha of Rs.400/- to his son. In order to prove their claim, the 2nd opposite party has examined one of his employee as RW.2. According to the documents filed by the applicant before the Authority that deceased was not a driver on the lorry one Kallepalli Yadagiri was its driver. The deceased was an un-authorised passenger of the lorry and while he was proceeding to answer the calls of nature, an un-identified DCM van dashed him resulting his instant death.

16. It is true, a complaint was lodged before the police about the accident. The post-mortem report of the deceased will prove that the death was due to accident. The 1st opposite party being owner of a lorry and having insured it with 2nd opposite party, it may not be difficult for him to create a false story as if his son was driving the lorry and he died while he was on duty. As per the averments made in the application the lorry was proceeding from Warangal to Medchal on that day. The distance between these two places is hardly 125 to 150 km which a lorry would cover in 2 to 3 hours. There is no necessity to have a spare driver to bring the load. The record shows there was another driver by name K.Yadagiri on the lorry at the time of

accident. As per the claim of applicant, she was having disputes with her husband and she along with her children residing in a separate house. If that is a fact, the deceased could not have been employed as lorry driver of his father. Therefore, the applicant failed to prove the relationship of deceased as employee with his own father. There was no evidence before the Court to believe that the deceased was driving the vehicle, RW.2 has admitted that Ex.B1 policy was in force at the time of accident.

17. It is quite easy for the applicant to claim and aver that she was separated from her husband and her son was employed as driver on the vehicle and that he died while driving the vehicle with a cotton seed load. She is not an eye-witness to the accident. The circumstances elicited from the witnesses and the conduct of applicant as well as 1st opposite party is quite suspicious. If really there are disputes between the couple and she was living away from the husband along with the children, she could not have employed her son with the 1st opposite party. For arguments sake, even if it is accepted that having separated from her husband, she allowed her son to work as driver of his lorry, she could have disclosed the same at the time of filing application itself. The record further shows that the 1st opposite

party informed the police that one Kallepalli Yadagiri was driver of the lorry. The evidence of all the witnesses probablises the claim of insurance company rather than the case of applicant. The applicant did not disclose anything about her relation with the 1st opposite party until the insurance company filed an additional counter and examined the owner itself as RW.1.

18. The applicant placed reliance on Judgment between ***"Shriram General Insurance Co. Ltd. Vs. Geeta Sharma and others,[1]"*** for the proposition that when the evidence discloses that the workman died during the course of employment and when the insurance company which filed appeal contended the risk of workman was not covered under the policy, the Court came to the conclusion that the appeal preferred by the insurance company is not maintainable.

19. While relying on Judgment between ***"Oriental Insurance Co. Ltd., V. Ramesh and another"[2]***. The learned counsel for the appellant has submitted that the jural relationship of employer and employee is proved and owner of the lorry can appoint his own son as driver. The applicant further claimed that when the evidence discloses that the owner of a lorry employed his own two sons as coolies on the

[1] 2021 ACJ 1395
[2] 2016 ACJ 519

agricultural lands and in an accident while transporting sugar cane, they died while checking the wheel of the tractor, the insurance company made liable to pay compensation. In the above said Judgment, the Hon'ble High Court of Karnataka was pleased to observe that the insurance company cannot challenge the award on the grounds other than those available under Section 149(2) of Motor Vehicles Act. He has also relied on a Judgment between ***"United India Insurance Co. Ltd., V. N.Bujji @ Manemma and another"***[3] and argued that merely because deceased was son of owner of tractor, it cannot be said that relationship of employer and employee between them did not arise and deceased was not a 'workman'. There is no bar under the Act to say that the father should not employ his son.

20. He has also relied no another Judgment in ***"United India Insurance Co. Ltd., V. Prakash Shankar Gurav and another"***[4] for the same proposition and sought for dismissal of the application. The learned counsel for the 2nd opposite party has relied on a Judgment between ***"North East Karnataka Road Transport Corporation V. Sujatha"***[5] where under, the Hon'ble Supreme Court of India upheld the Judgment of Hon'ble

[3] 2011 (3) ALD 417
[4] 2006 ACJ 747
[5] 2019 ACJ 29

High Court where under appeal of employer was dismissed as no substantial question of law was involved.

21. The insurance company also relied on a Judgment between ***"Gottumukkula Appala Narasimha Raju and others V. National Insurance Co. Ltd., and another"***[6], in this Judgment, the Hon'ble Supreme Court was pleased to observe that the widow of the deceased who deposed before the Court that she was living separately from her husband, deceased was employed as driver. The claim was filed against the owner of the tractor, who is no other than the widow of the deceased itself. The Hon'ble Apex Court found that a story has been concocted for the purpose of claim and held that the owner of the tractor joined hands with the claimants for laying a claim against the insurance company and dismissed the claim.

22. In the case on hand, the applicant, who is mother of the deceased filed an application against her husband, who is owner of a lorry with a plea that her son worked as driver and supposed to have died while on the employment of 1st opposite party. Nothing prevented her to disclose her relationship with the 1st opposite party and she can as well informed the Court that she is living separately. The conduct of the claimant in not

[6] 2007 ACJ 1025

disclosing these details and the unnatural contention of the applicant that though she said to have had disputes with her husband, living away from him with her children, engaged her son as a driver on the lorry and that her son died while discharging his duty as driver is highly unbelievable. The learned Commissioner gave unnecessary importance to the record obtained from the police station. If there is a collusion between the couple to lay a false claim of compensation, it may not be a difficult task for lodging a false complaint as if the deceased was driver on the vehicle and that he died while proceeding to the other side of the road after getting down from the lorry and died in a road accident. In the above referred Judgment between G.Appala Narasimha Raju Vs. National Insurance Co. Ltd., and another, Hon'ble Apex Court was pleased to observe that in the following Paras :

> "In our considered opinion, it is wholly absurd to suggest that the husband would be a 'workman' of his wife in absence of any specific contract. We have no doubt in our mind that only for the purpose of proceeding under 1923 Act, the appellants have concocted the story of husband and wife living separately. If they have been living separately in view of certain disputes, the question of husband being a 'workman' under her appears to be a far fetched one".
>
> "Technically, it may be possible that the husband is employed under the wife, but, while arriving at a conclusion that when a dispute has been raised by other side, the overall

situation should have been taken into consideration. The fact, which speaks for itself shows that the owner of the tractor joined hands with the claimant for laying a claim only against the insurer. The claim was not *bona fide*".

"No documentary proof to establish the contract of employment was produced. No independent witness was examined. Even as to for what purpose the tractor was being used had not been disclosed. How the accident had taken place is also not borne out from the records of the case. If the deceased, with all intent and purport, was the owner of the tractor, the claim petition under the 1988 Act might not have been maintainable. A petition under 1923 Act certainly would not lie. Only because Sections 143 and 167 of the 1988 Act refer to the provisions of the 1923 Act, the same by itself would not mean that the provisions of the 1988 Act, propio Vigore would apply in regard to a proceeding for payment under the 1923 Act. The limited applicability of the provisions of the 1988 Act, in relation to the proceedings under the 1923 Act has been discussed by this Court in the aforementioned judgments. It is thus, not possible to extend the scope and ambit of the provisions of 1988 Act to the provisions of 1923 Act save and except to the extent noticed hereinbefore".

23. It is true, the Workmens Compensation Act is beneficial legislation, but under the grab of such plea, a false claim cannot be encouraged causing irreparable loss to the insurance company. As could be seen from Exs.A1 to A3, one Akbar Shaik was shown as cleaner and one driver by name Yadagiri on the above said lorry. The occupation of deceased was shown as driver. Being father of the deceased and owner of the vehicle, it would not have been a difficult task for RW.1 to depose falsehood

as if he employed his own son as driver, inspite of claim of applicant that she and her children are living away from the husband. The learned Commissioner while allowing the claim of applicant opined that it is not uncommon amongst the business family to engage their own kith and kin for doing the business or commercial activity. But here it is a specific claim of applicant she had disputes with her husband. In such case, her evidence that she employed her son with the husband is not believable. Therefore, this Court feels that a false claim has been laid by the couple that as if their son met with an accident while he was on duty as driver on the lorry of his father. It is clear that the death was not occurred as narrated by the applicant. So the 1st opposite party cannot be held responsible for payment of compensation. Therefore, the question of 2nd opposite party/appellant indemnifying the insured does not arise. Therefore, the order of the learned Commissioner fastening the liability against the insurance company is not sustainable. Therefore, it is liable to be set aside.

24. In the result, the appeal is allowed. If the insurance company deposited the compensation amount, it is at liberty to recover the same from applicant and respondent No.1 together with costs and interest.

Consequently, Miscellaneous applications if any, are closed.

There shall be no order as to costs.

Sd/- B.S.CHIRANJEEVI
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Commissioner for Employees Compensation and Deputy Commissioner of Labour I, T. Anjaiah Karmika Samkhsema Bhavan, RTC Crossroads, Hyderabad.
2. One CC to Sri. T Mahender Rao, Advocate [OPUC]
3. One CC to Sri. P Ramakrishna Reddy, Advocate [OPUC]
4. One CC to Sri. KOTA SUBBA RAO, Advocate [OPUC]
5. Two CD Copies
6. One spare copy

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HIGH COURT
DATED:28/09/2022

HIGH COURT FOR THE STATE OF TELANGANA
21 FEB 2023
DESPATCHED

JUDGMENT
CMA.No.1102 of 2017

ALLOWING THE CMA WITHOUT COSTS

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