

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

CIVIL MISCELLANEOUS APPEAL No.907 OF 2016

ORDER:

The United India Insurance Company Limited has preferred this Civil Miscellaneous Appeal under Section 30 of Employees' Compensation Act against the order of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Sangareddy in a workmen's compensation case vide W.C.No.6 of 2003 (F) where under learned Commissioner directed the appellant herein and owner of the vehicle which involved in the accident to pay an amount of Rs.2,54,619/- towards compensation for the death of one Pirangi Pochaiah (who hereinafter will be referred as the deceased).

2. As could be seen from the record, the mother, brother and sister of the deceased Pirangi Pochaiah have filed the above said case vide W.C.No.6 of 2003 before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Sangareddy on the ground that the deceased while working as cleaner on the lorry owned

by one Najeeb Humani who was shown as 1st opposite party in the above referred workmen's compensation case and died in the course of employment. According to their application before the Commissioner for Workmen's Compensation, Sangareddy, it was the case of the applicants who are shown as respondent Nos.1 to 3 in the present appeal that the deceased was working as cleaner on a lorry bearing No.AP9 V-523 which belongs to the respondent/1st opposite party, on a monthly salary of Rs.3,000/- apart from daily batta of Rs.50/- per day.

3. On 20.11.2002 he was on duty on the said lorry and when the lorry proceeding towards Hyderabad from Manchiryal and when it reached one Khandasari Sugar Factory, Kodakandla Village at about 04:00 P.M. on the same day, the driver of the lorry drove it in high speed, in a rash and negligent manner and dashed to a stationed lorry bearing No.AHJ-5679. Due to the said accident, the deceased suffered serious injuries and succumbed to death while undergoing treatment. A case was registered by the Police, Kukunoorpally against the driver of the said lorry.

The respondent Nos.1 to 3 (applicants) sought for compensation from the owner of the vehicle (1st opposite party) and also from the Insurance Company/appellant herein (2nd opposite party) on the ground that the lorry was insured with the appellant herein.

4. The 4th respondent herein (1st opposite party) did not choose to contest the petition and he did not respond to the notice published in Prajasakti Daily as substituted service. The appellant herein opposed the said petition disputing all the material averments including the employment of the deceased, age, salary etc., claimed by the respondent Nos.1 to 3. The learned Commissioner enquired the application. During the enquiry, the mother of the deceased (1st respondent) was examined as PW1 and one S.Anji Reddy who was an eye witness to the accident was examined as PW2. The applicants have marked Exs.A1 to A6. The appellant herein did not examine any witness, but marked a copy of policy as Ex.B2. Learned Commissioner considered the evidence of PWs 1 and 2,

Exs.A1 to A6 and allowed the application directing the opposite parties to pay compensation as stated above.

5. Being aggrieved by the said judgment, the appellant filed the present appeal on the ground that the Commissioner committed an error in allowing the application, directing the appellant herein to pay compensation without proper evidence about the employment and death of the deceased during the course of employment. The appellant has claimed that the Commissioner ought to have seen that there is a burden on the claimant to prove the employment of the deceased with the opposite party. But, there was no evidence in support of the said employment and about the salary said to have been paid by the 4th respondent. The appellant further pleaded that the Commissioner ought to have discarded the evidence of PW2 since he is not an eye witness, his name is not stated in the FIR or in any police records. It is also the case of the appellant that during her evidence PW1 admitted that she did not file any document to show the salary and employment of the deceased. In spite of it, the

Commissioner awarded compensation, fixing liability against the appellant herein, thereby the appellant sought for setting aside the order and for dismissing the case of respondent Nos.1 to 3.

6. I have heard both parties.

7. The following substantial questions of laws arose for consideration in the appeal :

- 1) Whether the Commissioner is right in awarding compensation without production of any salary certificate and proof about the employee and employer relationship between the deceased and 4th respondent?
- 2) Whether the claimants have established that the deceased was working within the meaning of Section 2 (1) (N) of Workmen's Compensation Act, and whether the conclusions arrived by the Deputy Commissioner of Labour that the deceased was workman is incorrect?

8. **POINTS:**

While relying on judgment between the **Director, Xavier Institute of Social Service, Ranchi vs. Mostt Etwari Devi reported in 2002 LawSuit (Jhar) 132.**

Learned counsel for the appellants has submitted that there is no evidence before the Court to believe that the deceased was a workman within the meaning of Workmen's Compensation Act. The claimants could not place any material in support of their claim. Therefore, the Court below ought to have dismissed their application, instead passed an award, thereby it is liable to be set aside.

9. It is true that the mother of the deceased who is examined as PW1 admitted before the Court below that she is not an eye witness to the alleged incident. It is also true that during cross examination of PW2 it was elicited that his name was not found in the FIR and charge sheet. However, the order impugned in the present appeal clearly shows that PW2 stated before the learned Commissioner that he was present and witnessed the accident. Nothing could be elicited from the cross examination of PW2 to suspect that he was not an eye witness Pw2 may not be able to explain why his name was not cited as witness by the police.

10. The oral evidence of PW1 with regard to the accident, death of her son etc., are strengthened by the documents marked as Exs.A1 to A6. The First Information Report clearly shows that there was an accident due to rash and negligent driving by the driver of 4th respondent herein, which resulted the death of the deceased. The appellant who took plea that the deceased was an unauthorized passenger on the lorry, could not substantiate the said claim either by oral or documentary evidence.

11. In fact, Exs.A1 to A6 proved the accident, employment of the deceased. There is no evidence before the Court that what all stated by PW1 about the employment of her son with 4th respondent is a fake or false statement. The learned Commissioner having scrutinized the oral and documentary evidence came to a right conclusion. It is true the claimants did not produce any proof about the salary of the deceased. As per the award, it is very clear that the Commissioner did not accept the claim of PW1 with regard to the quantum of salary, but the compensation was awarded on the basis of

Government Order vide G.O.Ms.No.81 dated 02.12.2000 by which the salary/wages of cleaner is fixed as Rs.2,237/-. The age of the deceased is available in the inquest and post mortem reports, thereby the Commissioner rightly calculated the compensation. The evidence of PW1 and Ex.A1 to A6 proved the employment of the deceased on the lorry owned by Rw4 and also the deceased died during the course of employment as such.

12. Therefore, the citations relied on by the appellant did not applicable to the present case and there are no grounds to interfere with the finding of the learned Commissioner. Therefore, the appeal is liable to be dismissed.

13. In the result, the appeal is dismissed. No costs.

14. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE SAMBASIVA RAO NAIDU

Date: 21.10.2022
PSSK