

THE HONOURABLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS APPEAL No.214 of 2018

JUDGMENT:

1. The present civil miscellaneous appeal has been directed against order dated 05.10.2017 in E.C.No.115 of 2012 on the file of Commissioner for Employees' Compensation and Assistant Commissioner of Labour -IV (FAC), Hyderabad (hereinafter referred to as 'the Commissioner'), wherein and whereby, the claim of respondent Nos.1 and 2 herein, for grant of compensation for death of their son B. Raju (hereinafter referred to as 'deceased') during his employment in lorry vehicle bearing No. AP 29 TA 7019 was allowed granting compensation of Rs.5,29,442/- along with interest at 12 % per annum on compensation amount of Rs.5,26,390/- from 17.09.2012 till the date of realization. Aggrieved by the same, the present appeal is at the instance of insurance company i.e., opposite party No.2 in the proceedings before the Commissioner.

2. The case of the respondent Nos.1 and 2 herein, who are claimants before the Commissioner is that the deceased was cleaner of lorry bearing No. AP 29 TA 7019 and he was employed as cleaner by respondent No.3 herein and appellant herein was insurer of lorry. On 17.08.2012, the deceased went for duty as

cleaner on the above said lorry. After unloading material at Moosapet, the deceased was taking rest in the cabin and while in sleep suffered from heart attack and died. According to respondent Nos.1 and 2, heart attack was caused due to stress, strain and restless duties and sleepless nights in the course of employment. In this regard, First Information Report (FIR) No.354 of 2012 was registered by Police, PS Balanagar. Further, the policy issued by the appellant was in force covering the workers employed by the respondent No.3, therefore, respondent Nos.1 and 2 filed the present claim before the Commissioner claiming compensation.

3. Respondent No.3 herein has not contested the proceedings before the Commissioner. The appellant herein filed its counter pleading that there is no employee and employer relationship between the deceased and respondent No.3. They further contended that the death was on account of suicide and hence, the appellant company is not liable to pay any compensation and also denied age and monthly income of the deceased.

4. On the basis of the above pleadings, the Commissioner has framed the following issues for consideration:

“1. Whether the deceased died due to the injuries sustained in the accident on 16.08.2012 during the course and out of his

employment as a cleaner on the lorry bearing No. AP 29 TA 7109 under the employment of the 1st opp. party?

2. If yes, who are liable to pay compensation to the dependants of the deceased? and;

3. What is the amount of compensation entitled by the dependants of the deceased?”

5. In support of their case, respondent Nos.1 and 2 examined A.W.1 and got marked Exs.A-1 to A-9 before the Commissioner. The appellant examined R.W.1 and got marked Exs.B-1 to B-3 and respondent No.3 remained *ex parte*.

6. The Commissioner after appreciating the evidence on record found that there is employee and employer relationship between the deceased and respondent No.3. Accordingly, granted compensation to respondent Nos.1 and 2. Aggrieved by the same, the present appeal is filed.

7. Heard both sides.

8. In the light of the above submissions the following point emerged for consideration before this Court:

“Whether the findings of the Commissioner in holding that there was employer and employee relationship between the deceased and respondent No.3 suffer from any perversity, so as to give rise to substantial question of law?”

Point:-

9. The evidence on record shows that the regular cleaner of the lorry lodged FIR. The final report shows that the deceased died on account of consumption of unknown poisonous substances. The FIR clearly demonstrates that deceased boarded lorry in search of employment. The evidence shows that the driver promised to give employment to the deceased over other lorry, but the deceased died in cabin in suspicious circumstances. Subsequent investigation revealed that he died due to consumption of poison.

10. Learned counsel for appellant contended that the evidence produced by respondent Nos.1 and 2 before the Commissioner clearly demonstrates that deceased was not employed by the owner of the lorry and in fact, cleaner, who is the friend of deceased invited the deceased for providing employment on other vehicle, with assistance of driver and not on the lorry vehicle bearing No. AP 29 TA 7019. The Commissioner without looking into such evidence relying upon the judgment of Bombay High Court in **Mohd. Anis Mohd. Elyea Khan v. Iltiza & Co. and another**¹ held that there is valid employment and accordingly compensation was

¹ 2000-I-LLJ-1304.

awarded, which according to the learned counsel for appellant suffers from perversity.

11. Learned counsel for respondent Nos.1 and 2 submitted that there is ample evidence on record to show that the deceased was employed by the driver and the driver had authority to employ said person and there is valid existence of employee and employer relationship between deceased and respondent No.3. Therefore, the Commissioner by placing reliance on the judgment cited supra has rightly held existence of relationship of employee and employer and such findings do not suffer from perversity.

12. A scrutiny of the evidence on record clearly demonstrates that the FIR was lodged by the cleaner of the lorry and the deceased was not shown as cleaner of vehicle. Further, the FIR shows that the deceased boarded lorry in search of employment. In fact, the driver promised to provide employment to the deceased on another vehicle. Respondent Nos.1 and 2 have not examined either owner or driver of the lorry to show that the deceased was employed either by driver with express permission of owner or by owner of the vehicle. Without such evidence, it cannot be said that the deceased was employed by respondent No.3.

13. In the judgment relied upon by the Commissioner, the driver was holding express authority to select employee of his choice. Such evidence is not there in the present case. In fact, the documents placed by respondent Nos.1 and 2 before the Commissioner clearly demonstrates that the deceased boarded lorry in search of employment and same was promised by the driver on another vehicle. The evidence do not show that driver employed deceased on the lorry owned by respondent No.3. This was not considered by the Commissioner. Contrary to this evidence, the Commissioner by his self-assumption held that there was employee and employer relationship. Such findings suffer from perversity.

14. Learned counsel for the appellant further contended that respondent Nos.1 and 2 withheld evidence in respect of postmortem report as well as forensic report. It is unfortunate that the appellant i.e., the insurance company has also not filed forensic report. On contrary, the final report clearly demonstrates that the deceased died on account of poison, but it is contrary to the case set up by respondent Nos.1 and 2 that the deceased died on account of heart attack. There is no medical evidence supporting

such claim. The final report clearly demonstrates that death is not on account of heart attack, but it is on account of suicide attempt made by the deceased. These aspects were not considered by the Commissioner. Such finding suffers from perversity and requires to be set aside.

15. In the result, the civil miscellaneous appeal is allowed and consequently, the order dated 05.10.2017 in E.C.No.115 of 2012 on the file of Commissioner for Employees' Compensation and Assistant Commissioner of Labour -IV (FAC), Hyderabad, is set aside. The appellant is permitted to withdraw 50% of compensation amount which was deposited by them and lying before the Commissioner. Further, the appellant is permitted to take steps for recovery of balance amount of compensation which was deposited by them before the Commissioner and withdrawn by respondent Nos.1 and 2 on the strength of the award. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

M.LAXMAN, J

Date: 02.01.2023
GVR