

HONOURABLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS APPEAL No.1343 of 2008

JUDGMENT:

1. The present civil miscellaneous appeal has been directed against award dated 21.11.2007 in W.C.No.7 of 2006 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I at Hyderabad (hereinafter referred to as 'the Commissioner'), whereunder, the claim of respondent Nos.1 to 4 herein for grant of compensation for death of one Mr. Syed Sabeer Hussain (hereinafter referred to as 'deceased'), was allowed granting compensation of Rs.3,52,024/- including stamp fee and advocate fee. Aggrieved by the same, the present civil miscellaneous appeal is filed at the instance of opposite party No.2 therein i.e., insurance company.

2. The appellant herein is opposite party No.2/insurance company, respondent Nos.1 to 4 herein are claimants/legal heirs of deceased and respondent No.5 herein is opposite party No.1/owner of the vehicle before the Commissioner.

3. The main grievance of the appellant-insurance company is that there is no evidence on record to show that the death of the deceased was during the course his employment with respondent

No.5. It is their further contention that the cause of death was not relating to employment of the deceased. Therefore, the appellant-insurance company is not liable to pay compensation.

4. It is the case of respondent Nos.1 to 4 that deceased was engaged by respondent No.5 as driver of vehicle bearing No. AP02U6336. On 25.04.2005, the said vehicle left from Hyderabad to Mumbai. After unloading, the vehicle was parked on road side for cleaning, meanwhile, the driver i.e., deceased complained chest pain. Immediately, he was taken to hospital where, while undergoing treatment he died, as such, said death was during the course of his employment. Further, heart stroke was on account of hectic travelling of nearly 12 hours from Hyderabad to Mumbai, which resulted strain, which in turn resulted into heart stroke. Therefore, it is their contention that death was during the course of employment and it is related to employment. Hence, they prayed to dismiss the present appeal.

5. A close scrutiny of First Information Report (FIR) discloses that the deceased was driver of the vehicle bearing No.AP02U6336. It is also not seriously in dispute that the deceased left from Hyderabad to Mumbai on 25.04.2005 and travelling distance was

nearly 12 hours. It is not the case of the owner of the vehicle i.e., respondent No.5 that there was spare driver on the vehicle to reduce the strain of travelling continuously for 12 hours. The Commissioner while considering the case of death has taken into account multiple decisions of various High Courts to the effect that continuous driving is causative factor for aggravating cause of cardiac failure, such a death is related to employment injury. Such findings are based on evidence on record and the legal position laid down by various High Courts. Such findings do not suffer from any perversity.

6. The second contention put forth by learned counsel for the respondent Nos.1 to 4 is that the appeal is liable for dismissal for non-compliance of pre-deposit condition to file the appeal. It is contended that while depositing the amount, the appellant-insurance company which subrogated into the shoes of employer of the deceased has not complied the order of appeal and filed the present appeal without accompanying the memorandum of appeal with a certificate issued by the Commissioner. Therefore, this appeal is liable to be dismissed for non-complying the order of appeal.

7. In this regard, it is apt to refer to provisio under Section 30 of Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act"), which reads as under:

"Section: 30 Appeals.- (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:--

(a) to (e)...

Provided...

Provided...

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2)...

(3)..."

8. A reading of the above provision clearly establishes that a memorandum of appeal shall be accompanied with certificate issued by the Commissioner to the effect that the amount payable under the ordered appeal is deposited with him. The practice that is being practiced in numbering the appeal is that the insurance company or any other appellant, who files appeal under the Act, gets endorsement of deposit from the Commissioner's office and annex the same to the memorandum of grounds of appeal and seeks for numbering of appeal.

9. However, the appeal cannot be dismissed on the above technical ground raised by the learned counsel for respondent Nos.1 to 4, for the reason that there is mistake on the part of Scrutiny Section in numbering the appeal. Had such objection been raised when the appeal is numbered, the appellant would have given an opportunity to comply the same. Hence, for the said reasons this appeal cannot be dismissed on the above raised technical ground at the fag-end of the proceedings.

10. It is most unfortunate that the Scrutiny Section of this Court has failed to take notice of requirement of above referred provision under Section 30 of the Act, which is mandatory in nature. The pre-condition under the said provision is that the appellant must produce certificate issued by the Commissioner that the amount payable under ordered appeal has been fully complied with by way of deposit with him. Instead of the said procedure, a new procedure has been adopted to get the appeal numbered under the Act, which is unknown to law. Therefore, the Registrar (Judicial) shall see that all the appeals filed under the Act hereinafter shall be numbered only, if they are accompanied with certificate issued by the Commissioner to the effect that the amount payable under the order of appeal has been fully deposited with him. Only, if such

certificate is produced, the appeal shall be numbered. A copy of this order shall be circulated to the Registrar (Judicial), so as to enable him to issue necessary instructions to the Scrutiny Officers to comply with the direction.

11. The appeal does not involve any substantial question of law and the same is devoid of merits. Hence, the same is liable to be dismissed.

12. In the result, the civil miscellaneous appeal is dismissed confirming the order dated 21.11.2007 in W.C.No.7 of 2006 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I at Hyderabad. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

M.LAXMAN, J

Date: 30.01.2023
GVR