

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

WEDNESDAY, THE FIFTEENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SMT JUSTICE M.G.PRIYADARSINI

CIVIL MISCELLANEOUS APPEAL NO: 1017 OF 2012

Appeal Under Section 30 of Workmen's compensation Act, and decree dated 03.05.2012 made in W.C.No 131 of 2011 on file of the Court of the Commissioner for Employees Compensation and Assistant Commissioner of Labour-IV T. Anjaiah Karmika Samkshema Bhavani R.T.C. 'X' Roads, at Hyderabad.

Between:

M/s. Shriram General Insurance Co.Ltd., Rep. by it Branch Manager, Opp Geetha Nursing Home, Maredpally, Secunderabad.

...APPELLANTS/OPPOSITE PARTY No.2

AND

1. Kamble Ganapathi, S/o Lakshman, aged about 75 years
2. Smt. Sheshabhai Kamble, W/o Kamble Ganapathi, Occ: House Wife,
3. Smt. Kushavatiau Kamble, W/o late Davalu Laxman Kamble or Davulu, Occ House Wife,
All are R/o. Kharab Khandgaon Village, Mukhed Taluq, Nanded District, Maharashtra State, Presently at R/o Hyderabad.

RESPONDENTS/APPLICANTS

4. R. Venkatram, S/o Padatani, R/o H.No.3-14, Pulimamidi Village, Kandukur, Ibrahimpatnam Mandal, Ranga Reddy District.

...RESPONDENTS/APPLICANTS

CMAMP. NO: 1932 OF 2012

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 grant interim stay of all further proceedings including withdrawal of the deposited amount of Rs. 4,10,572/- to the credit of WC.No. 131 of 2011 on the file of the

Commissioner for Workmen's Compensation and Asst. Commissioner of Labour-
IV., Hyderabad, T.Anjaiah KArmika Samkshema Bhavan, RTC X Roads,
Hyderabad.

Counsel for the Appellant: SRI. A RAMAKRISHNA REDDY

Counsel for the Respondents: --

The Court made the following: ORDER

THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

CIVIL MISCELLANEOUS APPEAL No.1017 of 2012

JUDGMENT:

1. The present civil miscellaneous appeal has been directed against the order dated 03.05.2012 in W.C.No.131 of 2011 on the file of the Commissioner for Employees' Compensation and Assistant Commissioner for Labour-IV, Hyderabad (hereinafter referred to as 'Commissioner'). The claim petition in the said case has been filed by respondent Nos.1 to 3 herein seeking compensation for death of one Sri Davalu Laxman Kamble @ Davulu (hereinafter referred to as 'deceased') in an accident on 03.05.2010 and the same was partly allowed granting an amount of Rs.4,10,572/- towards compensation. Aggrieved by the same, the present civil miscellaneous appeal is filed at the instance of the insurance company i.e., opposite party No.2 before the Commissioner.

2. The appellant herein is opposite party No.2, respondent Nos.1 to 3 herein are applicants and respondent No.4 herein is opposite party No.1 before the Commissioner. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Commissioner.

3. The brief facts of the case of the applicants are that the deceased was employed as labourer with opposite party No.1 on his lorry bearing No.AP 26 U 0078 for loading and unloading paddy powder. On 03.05.2010 at about 01:00 hours, when the deceased was ^{loading} ~~kicking~~ paddy powder bags in the lorry, the driver of the lorry suddenly drove the lorry in rash and negligent manner. Due to which, the deceased came into contact with 11 KV electric wire and died on the spot due to electrocution. The said accident was registered in Crime No.80 of 2010 on the file of Maheswaram Police Station.

4. It is the further case of the applicants that the deceased was being paid an amount of Rs.6,000/- per month at Rs.200/- per day by opposite party No.1. He was aged about 32 years as on the date of the accident. The lorry of opposite party No.1 was insured with opposite party No.2 and the said policy was in force as on the date of accident. The deceased died during the course and out of his employment. Hence, the applicants filed the present claim petition seeking compensation of Rs.8,00,000/- with interest at 12% per annum from the date of the accident till the date of realization.

5. In spite of service of notice, opposite party No.1 remained *ex parte*. Opposite party No.2 filed its counter and contended that there

was no employee and employer relationship between the deceased and opposite party No.1. The occurrence of accident, death of the deceased and wages paid to him were denied. It is also denied that the driver of the lorry was having a valid driving license at the time of occurrence of accident. It is their further case that the risk of the deceased as labourer is not covered by the policy as no separate premium was paid by opposite party No.1. Accordingly, prayed to dismiss the claim petition.

6. In support of their case, the applicants got examined A.W.1 and got marked Exs.A-1 to A-12. Opposite party No.1 was set *ex parte*. Opposite party No.2 filed its counter and cross-examined A.W.1, but, in spite of granting sufficient time and opportunity failed to adduce evidence and advance arguments before the Commissioner. Hence, the evidence of opposite party No.2 was forfeited and their arguments were treated as nil.

7. On the basis of the above pleadings, the Commissioner framed the following points for consideration:

- "1. Whether the deceased is a workman within the meaning of the Act?
2. Whether the deceased died during the course and out of his employment?

3. If yes, who are liable to pay compensation to the dependants of the deceased?

4. What is the quantum of compensation entitled by the dependants of the deceased?"

8. After considering the pleadings and evidence on record, the Commissioner held that the applicants have successfully proved their case. Hence, the claim petition was partly allowed holding that both the opposite parties were jointly and severally liable to pay compensation and granted an amount of Rs.4,10,572/- towards compensation payable to the applicants.

9. Heard, the learned counsel for the appellant/opposite party No.2. In spite of issuance of notice, none appeared and there is no representation from the respondents.

10. Learned counsel for the appellant/opposite party No.2 i.e., the insurance company contended that though, the applicants have not established the employee and employer relationship between the deceased and opposite party No.2, without any evidence, the Commissioner has wrongly given findings that there is such relationship between them. He further contended that A.W.1, who is applicant No.3, has clearly admitted that she did not file any evidence to prove the employment, age and wages of the deceased. The

Commissioner has also not given any findings with regard to the contention of insurance company that insurance policy does not cover labourers.

11. Now the point for determination is as follows:

“Whether the applicants are entitled for the compensation as granted by the Commissioner?”

Point:-

12. This Court has perused the entire material placed on record. Admittedly, except, filing counter and cross-examining A.W.1, the opposite party No.2 did not adduce any evidence before the Commissioner. In fact, even after giving sufficient opportunity, it did not choose to advance any arguments before the Commissioner. Accordingly, the Commissioner was inclined to forfeit the evidence and treat arguments of opposite party No.2 as nil.

13. Coming to the contention that there was no employee and employer relationship between the deceased and opposite party No.1, admittedly, there is no specific evidence placed on record such as salary certificate or employment details to prove that the deceased was employed with opposite party No.1. When such documentary evidence is absent, the oral evidence has to be considered. The best person to

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speak about employment of the deceased, apart from himself, is his employer i.e., opposite party No.1. In the present case, opposite party No.1 is set *ex parte*. The applicants through their claim petition and the evidence of A.W.1 have contended that there is employee and employer relationship between the deceased and opposite party No.1. The documents marked as Exs.A-1 to A-7, which are police records support the case of the applicants that the deceased was working as labourer. Further, Ex.A-8 to A-12, which are documents pertaining to the vehicle involved in the accident, reflect the name of opposite party No.1 as owner of the vehicle. In the said circumstances, opposite party No.2, which is disputing the said relationship has to come up with evidence to disprove the case set up by the applicants, but the same is not done. It only relied upon the cross-examination of A.W.1, where the witness admitted that she did not file any proof of employment, age and wage of her deceased husband. The said admission does not clearly prove that, there is no employee and employer relationship between the deceased and opposite party No.1. Apart from that, opposite party No.2 did not adduce any oral or documentary evidence before the Commissioner to prove that there was no employee and employer relationship. Furthermore, it did not advance any arguments to clearly put forth its contentions before the

Commissioner. In the said circumstances, it cannot contend before this Court that the findings of the Commissioner with regard to accepting the employee and employer relationship between the deceased and opposite party No.1 suffer from perversity. The case of the applicants with regard to employee and employer relationship between the deceased and opposite party No.1 is clearly established through Exs.A-1 to A-12. Hence, the contention of the opposite party No.2 with regard to employee and employer relationship is unmerited and hereby rejected.

14. With regard to age and wages of the deceased, it is the case of the applicants that the deceased was aged about 32 years at the time of accident and he was earning an amount of Rs.6,000/- per month by working as labourer. The Commissioner has clearly held that the applicants have failed to prove that the deceased was earning an amount of Rs.6,000/- per month by working as labourer. Hence, he considered the minimum wages of labourer while determining the compensation. There was no specific document showing the age of the deceased and the applicants have contended that he was 32 years at the time of accident. The only documentary evidence available to prove the age of the deceased was post mortem examination report

under Ex.A-5. There was no contrary evidence set up by opposite party No.1 to disbelieve such a document. In the said circumstances, the Commissioner relied upon the Ex.A-5 to determine the age of the deceased while calculating the compensation. The said findings with regard to age and wages do not suffer from any illegality and interference of this Court is unwarranted.

15. A perusal of the insurance policy under Ex.A-12 clearly shows that the policy is subject to IMT Endorsement printed therein/attached to: IMT-40, IMT-28, IMT-39 and IMT-21. IMT-39 speaks of covering the driver, cleaner, conductor and the persons employed for loading and unloading, subject to number of persons permitted on the vehicle. The deceased was travelling in the lorry as person employed for loading and unloading. The policy shows that the vehicle was goods carrying vehicle. Further, in the absence of contrary evidence, the employee and employer relationship between the deceased and opposite party No.1 is proved. It is also proved that the deceased was working as labourer. Furthermore, opposite party No.2, except mere contentions did not adduce any kind of evidence to support its contention that the deceased is not covered under the policy. Under these circumstances, this Court feels that the mention

in the insurance policy that it is subject to IMT-39 and conclusion that the deceased was working as labourer is suffice to come to the conclusion that the deceased is covered under the insurance policy. The findings of the Commissioner in this regard also do not suffer from any perversity. Therefore, the contention of the appellant/opposite party No.2 is unmerited and the same is rejected.

16. It is the case of the applicants that the deceased was employed as labourer and during the course and out of his employment, while working on the lorry due to the negligence of the lorry driver, he came into contact with the electric wire and died due to electrocution. Except, mere denial, no cogent and convincing evidence has been brought on record by opposite party No.2 to disprove the case set up by the applicants. Further, opposite party No.2 did not raise any grounds before the Commissioner as it failed to advance arguments. In the said circumstances, it cannot raise any such grounds before this Court. Therefore, this Court feels that the Commissioner has properly assessed the entire factors and no interference is required by this Court. The appeal is devoid of merits and the same is liable to be dismissed.

17. In the result, the civil miscellaneous appeal is dismissed confirming the order dated 03.05.2012 in W.C.No.131 of 2011 on the file of the Commissioner for Employees' Compensation and Assistant Commissioner for Labour-IV, Hyderabad. There shall be no order as to costs. Miscellaneous applications pending, if any, shall stand closed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Commissioner for Employees compensation and Assistant Commissioner of Labour-IV- T Anjaiah Karmika Samkshema Bhavan RTC X roads, Hyderabad.
2. One CC to SRI. A RAMAKRISHNA REDDY, Advocate [OPUC]
3. Two CD Copies

Tyh/pr

Handwritten signature/initials

HIGH COURT

DATED: 15/11/2023

JUDGMENT

CMA.No.1017 of 2012



**DISMISSING THE APPEAL
WITHOUT COSTS**

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