

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

**MONDAY, THE TWENTIETH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS APPEAL NO: 469 OF 2009

Appeal Under Section 30 of W.C. Act against orders dated 01-04-2005 passed in W.C. No. 72 of 2004 on the file of the Commissioner for the Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad

Between:

The United India Insurance Co. Ltd., Rep. by its Divil. Manager, D.O.-1.,
Ramalaya Building, S.D. Road, Secunderabad

...APPELLANT/O.P-2

AND

1. Sadula Venkatamma W/o Narasimha, 26 years
2. S.Yadaiah, S/o Narasimha, age 10 years
3. S.Saidulu, S/o Narasimha, age 9 years
4. S.Renuka, D/o Narasimha, age 8 years
5. S.Narasamma, W/o Yellappa, age 48 years,
6. S.Yellappa, S/o Ramaiah, 50 years

Res. 2 to 4 are being minors rep. by their mother/R-1

All are R/o. Ramannapet Village, and mandal Nalgonda District. Now R/o
Balkampet, Hyderabad

...RESPONDENTS/APPLICANTS

7. Y. Sunil S/o K.B. Khanna, age 30 years, R/o 23-5-848, Opp: Sudha Talkies,
Shalibanda, Hyderabad

...RESPONDENT/O.P-1

CMAMP. NO: 1582 OF 2005

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 stay all further proceedings including the disbursement of the amount, pursuant to the order dated 01.04.2005, in W.C.No.72/2004, on the file of Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Hyderabad-II, pending disposal of the above appeal

Counsel for the Appellant: M/s. A. MALATHI

Counsel for the Respondents 1 to 6: SRI. B. PARAMESWARA RAO

Counsel for the Respondent No. 7: M/s. A. VARALAKSHMI (No representation)

The Court delivered the following: JUDGMENT

THE HON'BLE SRI JUSTICE M. LAXMAN

CIVIL MISCELLANEOUS APPEAL No.469 OF 2009

JUDGMENT:

1. The present appeal has been directed against award dated 01.04.2005 in W.C.No.72 of 2004 on the file of the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Hyderabad-II, wherein and whereby the claim made by respondent Nos.1 to 6 herein for grant of compensation of Rs.4,00,000/- for the death of Narasimha, driver of vehicle i.e., Ambassador car bearing No. ADY4386, was partly allowed by granting compensation of Rs.3,32,451/-, however, no interest has been granted. Aggrieved by the said award, the present appeal has been filed by the Insurance Company, which is Opposite Party No.2 before the Commissioner.

2. The main contentions of the learned counsel representing Insurance Company are that Ex.D2 is the copy of case diary, whereunder the statements of PWs.2 and 3 were recorded by the Investigating Officer, whereunder they made a statement that the deceased was working under one J.Prabhakar, but the evidence before the Commissioner was that the deceased was working under Y.Sunil – respondent No.7 herein. Therefore, there is inconsistency in between the statements and evidence

made by the witnesses. However, the said inconsistency was not considered by the Commissioner, while fixing liability on the appellant-OP No.2. According to the Commissioner, there is no employer and employee relationship between respondent No.7 and the deceased. Therefore, the Commissioner has committed an error in granting the compensation.

3. Learned counsel representing respondent Nos.1 to 6 seeks time. No representation is made on behalf of counsel for respondent No.7.

4. The case proceedings shows that a blanket stay was granted by this Court on 05.08.2005, but unfortunately no efforts were made by respondent Nos.1 to 6 to get the stay either vacated or modified. Thereby, the compensation cannot be reached to the claimants for almost 17 years. This is the background of the present appeal.

5. The evidence of PW.1 shows that the deceased was driver of the said vehicle. It is also not in dispute that at the time of accident, the deceased was the driver of the vehicle. As per appeal records and the evidence of applicants, the accident had occurred while the deceased was crossing the road for urination. Admittedly, in the present case, no license is produced.

6. In the light of the said facts and circumstances, the following substantial questions of law are framed for consideration.

1. *Whether the findings of the Commissioner holding that the deceased is the driver, employed by respondent No.1 without any license suffer from any perversity?*
2. *Whether the findings of the Commissioner holding that the Sunil is the employer when the previous statement before the police record shows that J.Prabhakar was the employer suffer from any perversity.*

Substantial Question No.1:

7. Respondent No.7 in his counter filed before the Commissioner admitted that the deceased was the driver and the Insurance Company disputed that he was not driver, but pedestrian. Even though, Respondent No.7 admitted the employment of the deceased, neither he nor the applicants have produced the license of the deceased so as to treat him as driver and so as to cover the liability by the Insurance Company. The liability of the Insurance Company would arise if the driver holds a valid license. Even though respondent No.7 employed the deceased as a driver, he is alone responsible for the payment of compensation if any incident occurred in course of his employment. The insurance company cannot be made liable in respect of a person employed without any license. Therefore, the finding of the Commissioner holding the

Insurance Company liable for compensation without having license by the deceased, suffers from perversity.

Substantial Question No.2:

8. There is no dispute that Ex.D2 contains previous statement of PWs.2 and 3 whereunder they stated that J.Prabhakar was employer of the deceased. Respondent No.7 filed counter admitting that the deceased was engaged as driver on the vehicle owned by him. In the statement also, he stated that he sold the vehicle to third party, but such sale was not registered. Therefore, the sale of the vehicle has no much relevance.

9. PWs.2 and 3 have been examined before the Commissioner and they categorically stated that the deceased was employed with one Sunil. They denied the suggestion that previously they made a statement before the police that J.Prabhakar was the employer of the deceased. When such denial is a retracted, the appellants should have called for the Investigating Officer to establish truthfulness of previous statement, which they have not done. Therefore, the evidence of PWs.2 and 3 before the Commissioner is a substantive piece of evidence and the previous statement is not a substantive piece of evidence and it can only be used for the purpose of contradiction and omission only, but not more than that.

10. In this case, when there is substantial evidence on record holding that the deceased was employee of Sunil, the Insurance Company cannot contend that Sunil is not the employer. Therefore, the Commissioner's finding that there is employer and employee relationship between the deceased and Sunil does not suffer from any perversity. Accordingly, this substantial question of law is answered.

9. Accordingly, Civil Miscellaneous Appeal is allowed. The impugned award in WC No.72 of 2004 dated 01.04.2005 making personal liability on the appellant - OP No.2 is set aside. However, the other findings of the Commissioner are confirmed. Accordingly, the appellants shall be permitted to withdraw the compensation amount deposited by it. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

//TRUE COPY//

Sd/- M. VIJAYA BHASKAR
JOINT REGISTRAR



SECTION OFFICER

To,

1. The Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Hyderabad-II
2. One CC to M/s. A. MALATHI, Advocate [OPUC]
3. One CC to M/s. A. VARALAKSHMI, Advocate [OPUC]
4. One CC to SRI. B. PARAMESWARA RAO, Advocate [OPUC]
5. Two CD Copies

HIGH COURT

DATED: 20/02/2023

JUDGMENT

CMA.No.469 of 2009



**ALLOWING THE CIVIL
MISCELLANEOUS APPEAL**

⑦ p.m.c.
21/6/23