

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**FRIDAY ,THE FIFTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL MISCELLANEOUS APPEAL NO: 302 OF 2022

Appeal Under Section 30 of Workmen's Compensation Act against the Judgment and Decree Dated 06/12/2014 made in W.C. No.20 of 2012 on the file of the Court of the Commissioner for Employees' Compensation and Deputy Commissioner of Labour, Mahabubnagar.

Between:

Shriram General Insurance Company Limited, Sitapura, Jaipur, Rajasthan-State
Rep.by its General Manager.

...Appellant/Opposite Party No.2

AND

1. Erramanjula Mahesh, S/o. Anjaneyulu, Aged about 21 years, occ Cleaner, R/o. H.No. 1-6-32, Kollapur Town Mahaboob Nagar District.

...Respondent/Applicant

2. Mohd Iqbal, S/o Mohd.Gul Mohammad, Age major, occ owner of Trolley Auto bearing No.AP 22 W-9305 7967, R/o. H.No.1-6-32, Kollapur Town Mahaboob Nagar District.

...RESPONDENT/Opposite Party No.2

CMAMP. NO: 1615 OF 2015

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased suspend the operation of the Award including disbursement or withdrawal amount deposited pending the disposal the CMA dt.16.12.2014 passed in W.C.No.20 of 2012 on the file of the Commissioner for Employees Compensation and Deputy Commissioner of Labour-Mahabubnagar.

Counsel for the Appellant: MR. HARINATH REDDY SOMA

Counsel for the Respondent No.1: SMT. PINGALI LAKSHMI

Counsel for the Respondent No.2: NONE APPEARED

The Court made the following: JUDGMENT

THE HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

CIVIL MISCELLANEOUS APPEAL NO.302 OF 2022

JUDGMENT :

Being aggrieved by the Order dated 06.12.2014 passed in W.C.Case No.20 of 2012 by the Commissioner for Employees' Compensation and the Deputy Commissioner of Labour, Mahabubnagar (for short 'Court below'), whereunder a sum of Rs.3,63,548/- with costs was awarded on account of the injuries sustained by respondent No.1 herein/applicant; opposite party No.2 before the Court below has preferred this appeal on the following grounds:

The Order of the Court below is contrary to law as the compensation in this case was not granted on the basis of entitlement under the law or material on record, only on the basis of presumptions and assumptions. The Court below failed to see that the applicant did not prove the employee-employer relationship by adducing sufficient cogent evidence. The Court below ought to have seen that the injuries sustained by respondent No.1/applicant not due to the alleged accident during the course of employment and that erred in considering the wages of respondent No.1 as Rs.5,354/- per month and also erred in

considering Exs.A.4 and A.5 certificates for assessing injuries and disability of respondent No.1, thereby, the Court below has wrongly granted excessive and exorbitant compensation. The Court below failed to see the alleged injury is not in schedule and that though the Court below observed that respondent No.1 is capable to doing the works as cleaner, awarded excessive compensation considering the earning capacity of respondent No.1 as 50%. Since the employee-employer relationship was not proved with the acceptable evidence, the appellant sought setting aside the Order impugned in this appeal.

2. As could be seen from the impugned Order, respondent No.1/applicant filed W.C.Case No.20 of 2012 seeking compensation of Rs.8,00,000/- for the injuries caused to him in a road traffic accident. According to his claim in the above referred case, he has been working as employee of respondent No.2/opposite party No.1 on a monthly salary of Rs.6,000/-. On 13.05.2011 on the instructions of respondent No.2 herein, he was proceeding in a trolley auto bearing No.AP-22W-9305 to Chinthapally village to supply the water bottles and when the said auto reached Boyapally Village, the driver of the said auto drove the auto in a rash and negligent manner, due to which, the auto turned

turtle, as a result thereof, respondent No.1 herein sustained grievous injuries all over his body, namely, multiple fractures to metatarsal of his left leg and amputation of that leg etc. Respondent No.1 herein filed the said case on the ground that he being an employee of respondent No.2 suffered injuries during the course of employment. Therefore, he is entitled to receive compensation from his employer, however, the vehicle was insured with the appellant herein, he prayed for compensation from both the appellant-insurance company and respondent No.2-employer.

3. Respondent No.2/employer in his counter admitted the averments of respondent No.1/applicant while the appellant/insurance company disputed the case stating that there was no employee-employer relationship between respondent No.1 and respondent No.2, therefore, appellant herein is not liable to pay compensation. On the basis of the contentions, the Court below has framed the following issues:

- 1) Whether the applicant was the employee of the OP(1), as on 13.05.2011, having been employed as 'Cleaner-cum-Labour' on his vehicle (Auto number AP-22W-9305) ?
- 2) Whether the injuries sustained by him arose out of and in the course of his employment ?

- 3) If so, what is the amount of compensation due to him under the Act ?
- 4) Which of the OPs is liable to pay him compensation?
- 5) Then, what Orders ?

4. After completion of enquiry, the Court below has come to the conclusion that respondent No.1 herein was able to prove the employee-employer relationship and his income through the said employment and also the injuries caused in the accident, thereby, awarded compensation under the impugned Order.

5. The main contention of the appellant herein is that the first information report, which was lodged with the police by none other than the uncle of respondent No.1, clearly demonstrates that respondent No.1 has been working in bottles company. Therefore, there is employee and employer relationship between respondent No.1 and respondent No.2 as such even if the injuries are proved and even if the disability is established, the appellant is not liable to pay compensation. However, the Court below come to the conclusion that the appellant herein is not able to place any material to disprove the contention of respondent No.1 and allowed the case.

6. As could be seen from the impugned Order, the Court below placed reliance on the oral evidence of respondent No.1, who was examined as AW.1, except the contention that he has been working as coolie and received injuries while he was carrying water bottles to Chinthapally Village, as per the instructions of his boss. The Court below while ignoring Ex.A.1 certified copy of FIR, which was lodged soon after the alleged accident, and gave much weight to the admissions of the respondent No.2 stating that respondent No.1 has been working as cleaner under respondent No.2. Since the case was filed by respondent No.1 on the ground of the alleged employee-employer relationship, the burden is solely on respondent No.1 to establish that he was working as employee of respondent No.2 and he received injuries during the course of employment.

7. According to the material placed before this Court, the accident occurred on 13.05.2011, the maternal uncle of respondent No.1 presented a report before Police, Kollapur Police Station on 15.05.2011. As per the said report, it was specifically stated that AW.1 was working in a water plant since twenty (20) days prior to the date of accident and on 13.05.2011, he accompanied with Mohd.Niranjan, who is the driver of the

offending vehicle, to supply water bottles at Chinthapally Village as a passenger, the alleged accident was occurred when the driver of the offending vehicle drove the same in a rash and negligent manner at high speed, due to which, the auto turned turtle. In the said report, the maternal uncle of respondent No.1 categorically stated that the delay in lodging the report was occurred because of he went along with the injured to Kurnool Hospital for providing better treatment to the respondent/applicant.

8. In the report itself, he categorically mentioned that the complaint was lodged before the police after treatment to AW.1. Therefore, it was clearly shows that Ex.A.1 was presented to the police two days after the accident. If really respondent No.1 was working as coolie or cleaner of respondent No.2, there could not have been any chance for maternal uncle of AW.1 to present the above referred report to the police. The report itself crystal clear that AW.1 was working in a water plant and the purpose of travelling on a trolley only to supply the water bottles at Chinthapally Village. Thereupon, the contention of respondent No.1 that he was working as cleaner with respondent No.2 is highly doubtful. The delay in presenting the report before the police was not explained properly.

9. The Court below simply relied on the counter filed by respondent No.2 and believed the version of respondent No.1 and granted an amount of more than three lakhs as compensation for the injuries, on the ground that respondent No.1 filed the claim under a beneficial legislation. However, in view of the specific averments made in the FIR which was lodged three days after the accident, it clearly shows that the respondent filed a false petition, which is nothing but abuse of process of law to get the money of the general public, which cannot be entertained. The Court below without considering the contentions raised by the insurance company and ignoring the averments in Ex.A.1, granted the compensation by allowing the case filed by respondent No.1.

10. Absolutely, there are no grounds to believe the alleged employment of respondent No.1 with respondent No.2 and also to believe that respondent No.1 received the injuries in the course of his employment. The Court below has observed in the impugned order that respondent No.1 himself got examined as AW.1 as well as he substantiated his claim that he received injuries by examining AW.2-Doctor. The medical record placed before the Court below proves that respondent No.1 received injuries, due to which, he is suffering from amputation but that may not be a

ground for entertaining an application, particularly, when it is filed under the provisions of Employees' Compensation Act, 1923 by which compensation can be awarded if he is able to prove that injuries caused to him were during the course of employment and in the discharge of his duties as an employee of respondent No.2. Be it viewed from any angle, this Court is of the considered opinion that Order impugned in this appeal is not sustainable under and warrants interference of this Court as such the impugned Order is liable to be set aside.

11. Resultantly, this Civil Miscellaneous Appeal is allowed, setting aside the impugned Order dated 06.12.2014 passed in W.C.Case No.20 of 2012 by the Court below. As consequence thereof, the said W.C.Case No.20 of 2012 is dismissed.

Pending miscellaneous application, if any, shall stand closed.

SD/- M. VIJAYA BHASKAR
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Commissioner for Employees Compensation and Deputy Commissioner of Labour, Mahabubnagar (With Records if any)
2. One CC to Mr. Harinath Reddy Soma, Advocate [OPUC].
3. One CC to Smt. Pingali Lakshmi, Advocate [OPUC].
4. Two CD Copies

KP/JAK

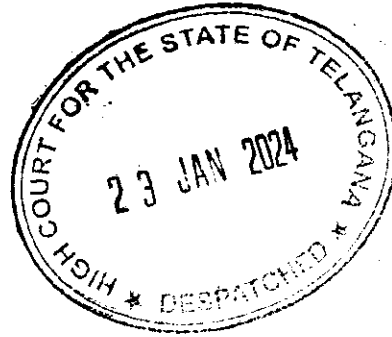
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HIGH COURT

DATED:15/09/2023

JUDGMENT

CMA.No.302 of 2022



ALLOWING THE CMA WITHOUT COSTS

6/10/23
8m
10/1/24