

(2009) 04 AP CK 0018
In the Andhra Pradesh High Court
Case No : C.M.A. No. 3243 of 2001

Branch Manager, United India Insurance Co. Ltd.	APPELLANT
Vs	
M. Peddanna and Others	RESPONDENT

Date of Decision : 23-04-2009

Acts Referred:

Workmens Compensation Act, 1923 — Section 143, 168, 2(1), 22, 30

Citation : (2011) ACJ 1745 : (2012) 2 TAC 514

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : A. Malathi, for the Appellant; R. Prabhakar, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—This appeal u/s 30 of the Workmen's Compensation Act, 1923 ("the Act", for brevity), is by the Branch Manager of United India Insurance Co. Ltd., Guntur. The appellant challenges the order dated 9.12.1999 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-2, Guntur ("the Commissioner", for brevity), in W.C. Case No. 302 of 1995 whereby and whereunder learned Commissioner awarded a sum of Rs. 82,950 as compensation for the injuries sustained by respondent No. 1 herein (claimant) in the accident while he was allegedly working as a cleaner in the lorry bearing No. AP 7T-1332.

2. Lorry bearing No. AP 7T-1332 (first lorry) was originally owned by one A. Narasimha Rao. Subsequently, Midathala Narayanamma purchased the lorry. She is none other than the wife of claimant. On 13/14.11.1993 at about 1 a.m. when the claimant was changing the tyre at Vedullapalem village junction on NH 5 between Visakhapatnam and Ganapavaram, another lorry bearing No. APG 5319 (second lorry) driven rashly dashed against back side of first lorry, as a result of which the claimant suffered injuries on both legs and some parts of the body. Crime was registered. He instituted the case u/s 22 of the Act claiming Rs. 1,20,000 alleging that he was in the employment of his wife, that he was earning

Rs. 1,400 per month in addition to daily allowance of Rs. 30, and that he was aged 40 years.

3. The case for compensation was opposed by the insurer contending inter alia that claimant himself is the actual owner as the lorry is owned by his wife and, therefore, he is not a workman/employee within the meaning of the Act. They, therefore, sought exoneration from the liability. Evidence was let in. Claimant examined himself as AW 1 and doctor who treated him as AW 2, besides marking Exhs. A1 to A4. No evidence was let in by the insurer.

4. Considering the evidence on record, learned Commissioner came to the conclusion that claimant is a workman as per the provisions of the Act, and awarded the sum mentioned hereinabove considering his wage as Rs. 899 per month.

5. Learned counsel for the appellant, placing reliance on *Gottumukkala Appala Narasimha Raju v. National Insurance Co. Ltd.*, 2007 ACJ 1025 (SC) , submits that the husband of the owner of the lorry cannot be treated as an employee or workman and, therefore, the Commissioner committed a serious error in awarding compensation. The respondent No. 1 is represented by an advocate. Yesterday, when the matter was heard he was absent. Today, the matter is appearing for dictating judgment in the court. In spite of the same, none appears for respondent No. 1 and learned counsel for respondent No. 1 is also absent.

6. In *Gottumukkala Appala Narasimha Raju* (supra), one Venkata Lakshmi was the owner of a tractor. Her husband Bangaru Raju alias Appala Raju died in an accident involving tractor insured with National Insurance Co. Ltd. Claim was filed before the Commissioner for Workmen's Compensation alleging that deceased was driver of the tractor earning Rs. 3,000 per month besides Rs. 25 daily allowance. Wife of the deceased took a plea that her husband had been living separately on the date of accident and that tractor having been insured with the insurer she is not liable to pay the amount to the claimant by way of compensation. Learned Commissioner ignored the plea of the insurance company that they are not liable and awarded Rs. 2,11,659. The appeal by the insurer was allowed by this court vide order dated 23.7.2003 in A.A.O. No. 2720 of 2003. Claimant then carried the matter to Apex Court by way of SLP. It was inter alia contended that husband of the owner of the tractor cannot be treated as workman within the meaning of the provisions of the Act. The plea was accepted by the Supreme Court. It is apt to extract the following observations from the reported judgment:

In our considered opinion, it is wholly absurd to suggest that the husband would be a "workman" of his wife in absence of any specific contract. We have no doubt in our mind that only for the purpose of proceeding under 1923 Act, the appellants have concocted the story of husband and wife living separately. If they have been living separately in view of certain disputes, the question of husband being a "workman" under her appears to be a far-fetched one.

Technically, it may be possible that the husband is employed under the wife, but, while arriving at a conclusion that when a dispute has been raised by other side, the overall situation should have been taken into consideration. The fact, which speaks for itself shows that the owner of the tractor joined hands with the claimant for laying a claim only against the insurer. The claim was not bona fide.

No documentary proof to establish the contract of employment was produced. No independent witness was examined. Even as to for what purpose the tractor was being used had not been disclosed. How the accident had taken place is also not borne out from the records of the case. If the deceased, with all intent and purport, was the owner of the tractor, the claim petition under the 1988 Act might not have been maintainable. A petition under the 1923 Act certainly would not lie. Only because sections 143 and 167 of the 1988 Act refer to the provisions of the 1923 Act, the same by itself would not mean that the provisions of the 1988 Act, *proprio vigore*, would apply in regard to a proceeding for payment under the 1923 Act. The limited applicability of the provisions of the 1988 Act in relation to the proceedings under the 1923 Act has been discussed by this court in the aforementioned judgments. It is, thus, not possible to extend the scope and ambit of the provisions of 1988 Act to the provisions of 1923 Act save and except to the extent noticed hereinbefore.

(Emphasis supplied)

7. In this case the AW 1 in his cross-examination admitted that his wife Narayanamma is owner of the lorry. It is not even his case that both of them are living in judicial separation or divorced. A contract between the owner of the first lorry and claimant, if any, was not produced nor proved before the Commissioner. Therefore, it must be held that the claimant who is the husband of the owner of first lorry cannot be treated as workman within the meaning of section 2(1) (n) of the Act. This court, however, hastens to add that in appropriate condition subject to proving a contract and also nature of ownership (say the firm or incorporated company or organization), a husband of the owner of an organization can still be treated as workman. However, this question does not arise in this case and it has to be decided in appropriate case depending on the facts of the case.

8. The civil miscellaneous appeal is accordingly allowed. There shall be no order as to costs.