(2009) 02 AP CK 0018

In the Andhra Pradesh High Court

Case No : C.M.A. No. 721 of 2005

National Insurance Company Limited	APPELLANT
Vs	
Smt. P. Narasamma and Another	RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:
Workmens Compensation Act, 1923 — Section 2(1)

Citation : (2009) 6 ALT 385

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : T. Mahender Rao, for the Appellant; Ch. Indrasena Reddy and S. Surender Reddy, for the Respondent

Final Decision : Dismissed

Judgement

S. Ashok Kumar, J.—Aggrieved over the quantum of compensation awarded in W.C. No. 4 of 2004 on 22nd June, 2005 by the learned Assistant Commissioner of Labour-II, T. Anjaiah Karmika Samkshema Bhavan, RTC Cross Roads, at Hyderabad, this appeal has been filed by the appellant.

2. Appellant herein is the Insurance Company-2nd opposite party and the respondents herein are the applicant-claimant and the owner of the crime vehicle-1st opposite party. The parties will hereinafter be referred to as arrayed before the Commissioner for the sake of convenience.

3. The brief facts of the case are as follows:

The claimant is the wife of one Venkataiah. (hereinafter referred to as ''the deceased''). The deceased was employed by the 1st opposite party as a labourer to load the timber with the help of pully-chain on his vehicle bearing No. AP 10 U 6235. On 12-1-2004, at about 5:30 p.m., while the deceased was loading the timber pieces, one of the timber pieces slipped and fell on him, due to which he sustained grievous injuries on his head. Immediately, he was shifted to Remedy Hospital, Kukatpally for treatment, where he was declared brought dead. The deceased was earning Rs. 4,000/- per month towards his salary (i.e., Rs. 150/- per day) and was aged 49 years at the time of the accident. Hence, the claimant claimed a compensation of Rs. 2,50,000/-.

4. The 1st opposite party filed a counter denying the averments in the claim petition and contended that she is not liable to pay compensation to the claimant as the Insurance policy is in force and therefore, he 2nd opposite party has to indemnify the same.

5. The 2nd opposite party filed a counter renying the averments in the petition and also contended that there is no employee and employer relationship between the deceased and the 1st opposite party. It is also contended that the claimant is not the wife of the deceased.

6. Before the Commissioner, the following issues were framed:

1. Whether there is employer-employee relationship between the O.P.I and the deceased?

2. Whether there is wife and husband relationship between the applicant and the deceased?

3. Whether the deceased sustained employment injuries during the course of his employment and lost his life?

4. Whether the Ops are liable to pay compensation? If so to what extent?

7. Before the Commissioner, A.W.1 was examined and Exs.A-1 to A.A.8 were marked on behalf of the claimant and R.W.1 was examined and Exs.D-1 to D-6 were marked on behalf of the 1st opposite party. On behalf of the 2nd opposite party, no oral evidence was adduced. But Exs.B-1 and B-2 were marked on its behalf.

8. On a consideration of the oral and documentary evidence, the Commissioner came to a conclusion that the 1st opposite party is the employer of the deceased workman, even though 1st opposite party has not directly employed the deceased but employed through her managing agent by name Bujya Nayak and therefore, in view of Sections 2(1)(e) and 2(1)(f) of the Workmen''s Compensation Act, there is employer and employee relationship between the 1st opposite party and the deceased workman and hence, the Insurance Company is liable to pay compensation and awarded a total compensation of Rs. 1,84,213/-.

9. Aggrieved over the said award, this appeal has been filed by the Insurance Company.

10. The contention of the learned Standing Counsel for the Insurance Company is that there is no employee and employer relationship between the deceased and the 1st opposite party whose vehicle was insured by the Insurance Company and the story that the deceased was an employee through the Managing agent by name Bujya Nayak has been invited for the purpose of this case.

11. Per contra, the learned Counsel appearing for the claimant would contend that the vehicle in question in which the timber was loaded and where the accident occurred was covered by the policy and as per IMT.39, premium has been paid for covering the risk of seven employees which includes the driver, cleaner and labourers for loading and unloading purpose and therefore, even in the absence of employee and employer relationship, there is liability on the part of the Insurance company since the risk is covered by the Insurance policy for labourers.

12. The fact the 1st opposite party is the owner of the vehicle bearing No. A.P. 10 U 6235 is not in dispute. The fact that the deceased died while loading timber in the vehicle in question is also not in dispute.

13. What is in dispute is whether the deceased was employed by the 1st opposite party and whether there is employee and employer relationship between the deceased and the 1st opposite party.

14. Normally, in cases of the goods vehicles the owner of the lorry cannot be expected to travel along with the lorry to engage persons to the destination for loading and unloading purposes. It is customary and usual and also practically necessary to have their own agents at the place of origin and at the place of destination to have agents to engage labourers for loading and unloading purposes. The owner of the vehicle i.e., 1st opposite party herein, is a resident of Adilabad and the accident had occurred at Hyderabad while loading timber. Naturally, the 1st opposite party should not have been at Hyderabad at the time of loading the timber and some one should have been looking after the loading the goods in the vehicle. Naturally he acts as an agent on behalf of the owner of the vehicle. In this case one Bujya Nayak is said to be the agent looking after the business of the 1st opposite party at Hyderabad. Therefore, the deceased was engaged by Bujya Nayak for loading the timber in the vehicle involved in the accident. It is an admitted fact that the deceased was not engaged by the 1st opposite party directly but was engaged by some other person in this case by name Bujya Nayak. The said Nayak has lodged a complaint immediately after the accident to the police. In the said complaint, he has specifically stated as under:

Our laborer Venkataiah, while loading wooden logs which were kept at Mallampet village into the lorry No. AP 10 U 6235 with the help of a chain pully, one wooden log slipped from the chain pully and fell on labourer Venkataiah who was standing behind the lorry and he sustained head injury.

15. It is categorically mentioned in the complaint even by Bujya Naik that "He is our labourer".

16. Under IMP.39, additional premium has been paid for seven persons which includes cleaner and loading and unloading labourers.

17. In the policy issued to the vehicle, Section-II-Liability to third parties, reads as follows:

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the vehicle.

(ii) Damage to property caused by the use (including the loading and/or unloading) of the vehicle.

18. So even if the deceased was considered as a third party, the death of any person arising out of loading and unloading of the vehicle in question is also entitled for compensation. But this is a case in which IMP 39 under which extra premium has been paid to cover the risk of seven persons which includes driver, and cleaner and five labourers engaged for the purpose of loading and unloading purposes. Having collected extra premium to cover the risk of labourers engaged for the purposes of loading and unloading, it is unfair on the part of the Insurance company to refuse to pay the compensation when once such labourer died in the accident that occurred during the course of loading and unloading operations.

19. The Assistant Commissioner has invoked Section 2(1)(e) which reads hereunder:

"employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him.

20. Bujya Naik is said to be the managing gent of the 1st opposite party. The word managing agent has been defined u/s 2(1)(f) which reads as follows:

''Managing agent'' means any person appointed or acting as the representative of another person for the purpose of carrying on such other person''s trade or business, but does not include an individual manager subordinate to an employer.

21. As already mentioned, it is difficult for the owner of the vehicle to travel along with the lorry to engage labourers for loading and unloading purposes and it is practically necessary for such owners to engage their own agents at the place of destination or at the place of origin to engage the labourers for loading and unloading purposes and therefore, the said Nayak even though he might have engaged the deceased for the purpose of loading and unloading, he can be taken as a managing agent of the 1st opposite party. Therefore, the employee and employer relationship between the deceased and the 1st opposite party is proved by the fact that he was engaged by managing agent of the 1st opposite party. The Assistant Commissioner has passed a detailed order as to how the

employee and employer relationship has arisen and has also fixed the proper quantum of compensation. Hence, I feel that the order impugned does not warrant any interference by this Court and hence, appeal is liable to be dismissed.

22. Accordingly, the C.M.A. is dismissed. No costs.