
(2005) 09 AP CK 0020

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 574 of 2003

National Insurance Company Ltd.

APPELLANT

Vs

Smt. Sabia Begum and Others

RESPONDENT

Date of Decision : 23-09-2005

Acts Referred:

Motor Vehicles Act, 1939 — Section 95
Workmens Compensation Act, 1923 — Section 12, 2, 30

Citation : (2006) 2 ACC 692 : (2005) 6 ALT 610 : (2006) 108 FLR 1069

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : T. Mahender Rao, for the Appellant; Raja Reddy Koneti, for the Respondent

Final Decision : Allowed

Judgement

R. Subhash Reddy, J.—This Civil Miscellaneous Appeal is filed by the National Insurance Company Limited, u/s 30 of the Workmen's Compensation Act, 1923, aggrieved by the award of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-IV, Hyderabad, passed in W.C. Case No. 104 of 2001.

2. The respondents 1 to 6 herein were the applicants before the Tribunal below, claiming compensation under the provisions of the Workmen's Compensation Act, 1923, on account of death of one Sri Mohd. Saber. Applicant No. 1 is the wife, Applicant Nos. 2 to 5 are the children, and Applicant No. 6 is the mother, of the deceased; whereas, Opposite Party No. 1 was the owner of the lorry bearing registration No. AP.9T.8106, and also father of the deceased, and, Opposite Party No. 2 was the insurer of the said lorry. It was the case of the applicants before the Tribunal that the deceased was employed by the first Opposite Party as driver on the said vehicle and, on intervening night of 22/23-9-2001, when the deceased was proceeding from Hyderabad to Gujarat on National Highway No. 9, near Sagar Dhaba, after crossing Zahirabad town in Andhra Pradesh, the

deceased-driver lost control over the steering, and, apprehending dangerous situation, he jumped from the lorry for the fear of losing life, and while doing so, he came under the wheel of the lorry; as a result, he suffered grievous injuries and died on the spot. It was stated, that the deceased was employed by the first Opposite Party, who is his own father, on monthly salary of Rs. 3,000/-. Pleading that the deceased was in employment of the first Opposite Party, and the accident occurred during the course of employment, compensation of Rs. 2,40,000/- was claimed from the Opposite Parties. It was their further case that as the first Opposite Party was the owner and second Opposite Party was the insurer of the said lorry; as such, both are liable for payment of compensation.

3. Before the Tribunal below, the first Opposite Party, who was the owner of the said lorry, remained absent by not claiming notice sent by the Tribunal, and as such, he was set ex parte. The second Opposite Party, who was the insurer of the vehicle, contested the proceedings. While disputing the allegations of the applicants, mainly the claim was resisted on the ground that the deceased was driving the vehicle of his own father, who was the first Opposite Party, and, claim of employment of the deceased with the first Opposite Party is concocted story, for the purpose of claiming compensation. Further, the second Opposite Party, disputing the employment of the deceased, pleaded that the claim petition is not maintainable under the provisions of the Workmen's Compensation Act, 1923 and sought for dismissal of the same.

4. Having regard to the pleadings on record, the Tribunal below framed the following questions for consideration:

"(1) Whether the deceased workman late Sri Mohd. Saber met with an accident in the intervening night of 22/23-9-2001 as a driver on the lorry bearing No. AP.9T.8601 and died?

(2) If yes, whether the deceased workman was in the employment of the first Opposite Party at the time of his death?

(3) If yes, who are liable to pay compensation to the applicants? And.

(4) What is the amount of compensation entitled by the applicants?"

5. To prove the claim, on behalf of the applicants, first applicant was examined as A.W.1 and documentary evidence under Exs. A-1 to A-4 were marked. On behalf of the respondents, no oral evidence was let in, but, however, a copy of the insurance policy was marked as Ex.D-1.

6. The tribunal below, having regard to the oral and documentary evidence on record had recorded the finding that the deceased/ driver died in the accident during the course of employment with his father. Further, accepting that the deceased was drawing wage of Rs. 3,000/- per month, the Tribunal below applied relevant multiplying factor 207.98, and, awarded compensation of Rs. 3,11,970/-, in addition to, Rs. 624/- on account of stamp duty, and Rs. 500/- on account of Advocate fee. Thus, in total, the Tribunal below awarded

compensation of Rs. 3,13,094/- with interest at the rate of 9% per annum.

7. Heard the learned Counsels for the parties. Perused the material on record.

8. In this appeal, it is contended by Sri T. Mahender Rao, the learned Counsel appearing for the appellant/insurer, that in absence of any evidence with regard to employment of the deceased with the seventh respondent herein, the Tribunal below erroneously entertained the claim application and awarded compensation. It is submitted, that the deceased is the son of the owner of the lorry, and, he was driving the said lorry casually, at the instance of his father, and, the deceased was not employed by the owner of the lorry. It is further submitted, that the claim of employment is made only for the purpose of claiming compensation from the appellant-insurer under the provisions of the Workmen's Compensation Act, 1923. Reliance is placed by the learned Counsel on the judgment of the learned Single judge of this Court in the case of United India Insurance Co. Ltd. Vs. Etnoori Yadagiri Goud and Others, , and, on the judgment of the Division Bench of the Karnataka High Court in the case of M. Akkavva Vs. New India Assurance Co. and Others, .

9. On the other hand, it is submitted by Sri Koneti Raja Reddy, the learned Counsel appearing for the respondents, that in this case, the deceased was employed by the owner of the lorry, and, incidentally, he is also his son. As such, it is submitted, that as the deceased was engaged as driver of the vehicle by its owner, and, he died during the course of employment, in that view of the matter, the Tribunal below has correctly appreciated the evidence on record, and, recorded its finding. It is further submitted by the learned Counsel, that the deceased was the "workman" within the meaning of Section 2(n) of the Workmen's Compensation Act, 1923; as such, the Tribunal below correctly recorded the finding and awarded compensation. The learned Counsel has placed reliance on the judgment of the learned Single Judge of this Court in the case of District Manager, Food Corporation of India Vs. Gottavilli Venkata Ratnam, , and, on the judgment of the Division Bench of this Court in the case of Bala Mallamma Vs. Registrar, Osmania University, Hyderabad and another, .

10. With reference to the above submissions, in this case, it is apt to note the scheme and various provisions of the legislation, i.e., Workmen's Compensation Act, 1923, which provides employer's liability for payment of compensation, if the workman suffers personal injury by accident arising out of and during the course of employment. The "workman" is defined in the Section 2(n) of the Workmen's Compensation Act, 1923, means, any person (other than a person whose employment is of a causal nature and who is employed otherwise than for the purpose of the employer's trade or business).... From the said provision, it is clear, that to maintain the claim against the owner of the vehicle or insurer of the vehicle, dependants have to necessarily prove the employment of the workman. In this case, it is the case of the applicants that the deceased was employed by his own father, who was the first Opposite Party and, he died during the course of employment. The appellant/ insurer primarily disputed the employment of the

deceased with the first Opposite Party. In spite of such defence from the insurer, there is no independent evidence adduced on behalf of the applicants to prove the employment of the deceased. Though, it was the case of the applicants that the deceased was in employment of the first Opposite Party, but except the interested version of the A.W.1, there is no other independent evidence on record to prove that the deceased was employed by his own father. Even from the version of A.W.1, it is not in dispute that the deceased was the son of the first Opposite Party, but, however, it was their case that he was employed by the first Opposite Party. There may not be any express prohibition for such employment, but, having regard to the defence of the appellant/insurer, if the compensation is claimed by resorting to the provisions under the Workmen's Compensation Act, 1923, the applicants have to establish that the deceased was employed by the first Opposite Party. Though, the word "employment" is not defined, but, having regard to the scheme of the Act, the word "employment" has to be necessarily construed as one's gainful occupation for another for the purpose of other's trade or business. As such, mere engagement of services of the deceased, as driver itself is not sufficient. But however, the Tribunal below, in absence of any independent evidence on record, recorded the finding with regard to employment, on a mere presumption. In the cross-examination of A.W.1, there was categorical suggestion that the deceased was not being paid any salary, as claimed by them, at the rate of Rs. 3,000/- per month from the first Opposite Party. Even the documentary evidence on record is not helpful to the applicants for the purpose of proving the employment.

11. The learned Counsel for the appellant relied on the judgment in the case of United India Insurance Company Limited v. Etnoori Yadagiri Goud (1 supra); a case which arose under the provisions of the Motor Vehicles Act, 1939, in which, brother of the owner of motor cycle was driving the vehicle and sustained fatal injuries. In those circumstances, as much as no negligence of the deceased was pleaded and established, the learned Single Judge of this Court has held that the insurer is not liable for payment of compensation. Further, in the judgment, in the case of Smt. M. Akkavva v. New India Assurance Company Limited (2 supra), the Division Bench of Karnataka High Court, while interpreting Section 95 of the Motor Vehicles Act, 1939, in respect of the death of the injured person on account of his own negligence, held that the insurer is not liable for payment of compensation. In the judgment, in the case of District Manager, Food Corporation of India v. Gottavilli Venkata Ratnam (3 supra), as cited by the learned Counsel for the applicants, the learned Single Judge of this Court has held that in view of the provision u/s 2(n) of the Workmen's Compensation Act, 1923, even a daily wage earner falls within the definition of workman. Further, in the case of Bala Mallamma v. Registrar, Osmania University (4 supra), while interpreting Section 12 of the Workmen's Compensation Act, 1923, the Division Bench of this Court has held that maintainability and white washing of the buildings falls within the definition of "trade or business". But, however, having regard to the real question which arises for consideration in this case, the judgments referred

above are not helpful to decide the same. As much as the very employment was in dispute, the real question in controversy is, whether the deceased was in employment or not, as on the date of accident, with the first Opposite Party. As I have already discussed, except the self-serving statement of the interested witness, i.e. A.W.1, there is no other independent evidence on record to prove the employment of the deceased, as such, it cannot be said that the deceased was employed by his own father for the purpose of driving the vehicle. May be that unfortunate applicants are dependants of the deceased, but in absence of proving employment of the deceased with the owner of the vehicle, they are not entitled to claim any compensation. Though I am conscious of the fact that the scheme of the Act is a beneficial legislation to the accident victims, but, at the same time, the various provisions of the legislation which are in the nature of quasi-penal one, have to be construed strictly. Entertaining any claim, like the one in this case, amounts to travelling beyond the scope of legislation. In that view of the matter, the impugned Award of the Tribunal below is liable to be set aside, and, accordingly the same is set aside.

12. The Civil Miscellaneous Appeal is, allowed. No order as to costs.