(2009) 04 AP CK 0088

In the Andhra Pradesh High Court

Case No : C.M.A. No. 3963 of 2004

New India Assurance Co. Ltd. — APPELLANT

Vs

B. Lalitha (Smt.) and Others — RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:
Workmens Compensation Act, 1923 — Section 11(I), 2(1), 3, 4, 4A

Citation : (2011) ACJ 407 : (2010) 1 ALT 441 : (2011) 128 FLR 352 : (2011) 2 TAC 471

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : A. Jayanthi, for the Appellant; Ch. Indrasena Reddy, for Respondent Nos. 1 and 2 and K. Prabhakar Reddy, for the Respondent

Final Decision : Dismissed

Judgement

S. Ashok Kumar, J.—Aggrieved over the Award dated 146-2004 passed in W.C. No. 60 of 2003 by the learned Commissioner for Workmen''s Compensation & Assistant Commissioner of Labour - IV, at Hyderabad, the Insurance Company filed the present appeal.

2. Brief facts of the case are as follows: The deceased by name B. Vittal was engaged as labourer on 7-8-2003 by the third respondent herein on his lorry bearing No. A.P. 7V 5567 for unloading Ammonium Nitrate bags from the said lorry in the premises of the Inax Products Co. It was averred in the claim petition that on that fateful day, at about 11.00 a.m. while the deceased was unloading the 50 Kg. bags of Ammonium Nitrate from the above said lorry of the third respondent, the deceased fell down due to slipping of his leg, resulting which, the 50 Kg. bag fell on the deceased. As a result of which, the deceased sustained grievous injuries. Immediately, he was shifted to nearby hospital and from there, he was shifted to Gandhi Hospital, wherein, while undergoing treatment, he died on 11-8-2003. A case in Crime No. 243 of 2003 was registered on the file of the Police Station, Patancheru. Thereafter, inquest and postmortem were conducted

on the dead body of the deceased. It was further averred that the deceased was being paid Rs. 150/- per day towards his wages and he was aged 35 years at the time of accident. Therefore, the applicants filed the above said claim petition, claiming compensation of Rs. 3,50,000/-.

3. The third respondent herein, who is the first Opposite Party before the Tribunal, filed counter denying all the averments made in the claim petition. However, he admitted the registration of the case by the police and also coverage of insurance to his lorry by the second opposite party and therefore, prayed for dismissal of the claim petition against him.

4. The appellant herein, which is Second Opposite Party before the Tribunal also filed counter denying the averments made in the claim petition. O.P. 2 denied the employment of the deceased with the O.P. 1, manner of accident, and the wages paid to him. O.P. 2 also denied the coverage of policy to the vehicle in question.

5. Based on the above pleadings, the learned Commissioner framed the following points for settlement.

1. Whether the deceased Late Sri B. Vittal, met with an accident on 7-8-2003 when he was in the employment of the first Opp. Party as a labourer on the lorry bearing No. A.P. 7V 5567 sustained injuries in the accident and died due to the injuries.

2. If yes, who are liable to pay compensation? and,

3. What is the amount of compensation entitled by the applicants?

6. In order to prove the claim, on behalf of the applicants, AW1 was examined and Exs.A-1 to A-10 were marked. On behalf of the Opposite Parties, R.W.1 was examined and Ex.B-1 policy and Ex.R-1 were marked.

7. On a perusal of the oral and documentary evidence, the Tribunal came to conclusion that the deceased died due to injuries sustained by him in the accident while he was unloading Ammonium Nitrate bags in the course of his employment with O.P.1 as labourer. Then proceeding to assess the compensation, the Tribunal awarded compensation of Rs. 2,15,824/-.

8. Aggrieved over the same, the Insurance Company filed the present appeal.

9. It is argued by the learned Standing Counsel for the appellant-Insurance Company that the employer and employee relationship between the deceased and O.P.1, who is owner of the lorry was not proved and therefore, there is no liability on the part of the Insurance Company to pay any compensation. He further argued that as the company paid exgratia, the deceased was not engaged by O.P.1, but engaged by the Company for unloading purpose and therefore, the Insurance Company is not liable to pay any compensation.

10. Per contra, the learned Counsel for the respondents/applicants argued that even if the contractor/owner of the lorry engaged the deceased for unloading of

Ammonium Nitrate bags, the liability of the Insurance Company cannot be excluded.

11. In this case, the admitted facts, which are undisputed, are that the lorry bearing No. AP 7V 5567 belongs to the third respondent/O.P.1, that the accident in question occurred on 7-8-2003, that the deceased sustained injuries while he was unloading the bags in Inax Products Company, that the deceased sustained injuries on 7-8-2003 during the course of his employment with OP.1 and died while undergoing treatment; that OP.1/third respondent herein paid additional premium of Rs. 175/- @ Rs. 25/- each for seven employees and the policy was valid as on the date of accident, and, that the deceased was employed for the purpose of unloading the bags from the lorry of the third respondent/OP. 1.

12. The only disputed fact is that the deceased was not employed by the third respondent/OP.1 as labourer, but employed as Hamali by the Company for unloading purpose, which had paid some amount towards exgratia to the applicants.

13. A perusal of Ex.B-1 and Ex.A-9 shows that the deceased was covered u/s 11(I)(i) of the policy and also as per IMT-39, which provides legal liability to persons employed in connection with the operation and/or maintaining and/or loading and/or unloading of motor vehicle (for goods vehicles). As per the IMT-39, the premium calculated is at the rate of Rs. 25/- per employee and the Insurance Company has collected Rs. 175/- at the rate of Rs. 25/- for 7 employees to cover the risk.

14. As per the provision u/s 2(1)(e) of the Workmen''s Compensation Act, 1923, ''employer'' includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representatives of a deceased employer. According to Section 2(1)(n)(i)(e) of the Act, the workman means any person who is a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle. And, as per Section 2(1)(f), 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. In this case, no record has been produced to show that the deceased was engaged by the Inax Products Company, which has paid some amount of exgratia to the dependants/applicants of the deceased.

15. This Court in National Insurance Co. Limited v. Narsamma CMA No. 721 of 2005, held that even though the employee was employed through the managing agent representative of the owner of the lorry for loading and unloading purpose, the lorry owner is the employer of the deceased employee. It was further held that since the insurance policy covered the risk of the employee who was employed for the purpose of loading and unloading on the lorry by collecting additional premium, the insurance company is liable to pay compensation to the dependants of the deceased. The same was the view in the decisions in United

India Insurance Co. Ltd. Vs. Shivabasavva, Vijaya Kumar Minor rep. by their Natural Mother Guardian, Shivabasavva, Somashekar Minor rep. by their Natural Mother Guardian, Shivabasavva and Vijaya Sankeshwar, , Mohd. Anis Mohd. Elyea Khan Vs. Iltiza and Co. and Another, and Secretary, Trivandrum Port and Headload Workers Co-operative Society Ltd. Vs. V. Dhaneshkumar alias Thampi and Another, . In the present case also, the deceased died due to the injuries sustained by him while he was unloading the goods in the course of his employment with OP.1. Therefore, the Tribunal was right in holding, that the deceased died due to injuries sustained by him while he was unloading the bags in the course of his employment with OP.1 and as he was covered by Ex.B-1 policy, as stated supra, both the appellant and third respondent herein are jointly and severally liable to pay the compensation.

16. Further, with regard to the contention as to the payment of exgratia, the Division Bench of the Madhya Pradesh High Court in the case of Divisional Engineer M.P. Electricity Board and Another Vs. Mantobai,), held that any payment of exgratia directly to the dependants of the deceased workman cannot be treated as compensation since it is not permissible under law to treat as compensation. It was observed as follows:

We understand the words ''made directly by an employer'' to mean an absolute prohibition against any payment made in whatsoever mode, under whatsoever circumstances, by the employer, because the legislature made it to be understood clearly by the employer that he was required to make ''deposit with the Commissioner'' of the payment to be made on account of compensation payable under the Act. The purport of the word ''directly'' has to be understood in its context and setting. It clearly refers to payment made out of Court: that it made no difference between a voluntary payment and one made under any compulsion, statutory or contractual. The only exception envisaging payment ''directly'' by an employer is to be read in the proviso to Section 8 under which a sum of Rs. 100/- in the maximum may be ''advanced'' to any dependant of a deceased workman which may be deducted by the Commissioner from the compensation deposited with him by the employer, for the purpose of repayment thereof to the employer. The proviso, as also Sub-sections (4) and (5) of Section 8, made it clear that the employer is under a statutory obligation to make deposit with the Commissioner of the entire compensation due payable for death of a workman to fulfill the object of the Act, and, in particular, of Section 8 itself. By judicial determination, the compensation so determined is required to be ''apportioned among the dependants of the deceased workman'' to prevent destitution of any member of the family dependant on him and any dispute arising between them in respect thereof. Apart from the ''repayment'' to the employer, contemplated under the proviso to Sub-section (1), the Commissioner is entitled to make payment of a sum of Rs. 50/- only, out of the amount deposited by the employer, to any person by whom expenses were incurred in connection with the workman''s funeral. This provision clearly indicates the cast-iron jacket of Section 8 with openings strictly specified.

We may now look at some of the other provisions of the Act to seek assurance of the view we have taken. Reading the provisions of Sections 3, 4 and 4A of the Act, we feel confident to observe that these provisions speak of the intention of the legislature that it is the statutory obligation of the employer to deposit suo motu with the Commissioner the compensation payable to a workman in accordance with the provisions of the Act without intervention of any judicial proceedings. The legislature has, therefore, left no scope for the employer either to make himself any deduction or to seek credit from the court for any deduction or any order for ''repayment'' from the sum deposited by him with the Commissions in accordance with the Act except to the extent and in the manner provided u/s 8 itself. Section 4A(1) also carries in it an inexorable mandate of the nature similar to that we have read in Section 8, albeit of a different purport. It says that ''compensation u/s 4 shall be paid as soon as it falls due'', while Sub-section (2) thereof adds further to stringency and rigidity or the liability of the employer saying ''he shall be bound to make provisional payment based on the extent of liability which he accepts and such payment shall be deposited with the Commissioner or made to the workman, as the case may be''. Be it noted in this connection that Section 8 is a special provision dealing with the case of a workman ''whose injury has resulted in death'', while Section 4 deals with cases not only of death, but also of injuries resulting in different types of disablements, such as ''total'', ''permanent'' ''partial'' and ''temporary''. There is no doubt that u/s 4A(2) payment to be made to the workman is envisaged only in those cases where the injury does not result in death and in the latter case, payment has to be made by way of deposit with the commissioner. The expression ''as the case may be'' exemplifies this position and excludes possibility of any doubt.

17. Since the fact remains that the deceased died during the course of employment with OP.1 while unloading Ammonium Nitrate bags from the lorry in question, and, as the lorry was insured with OP.2, both the owner of the said lorry and insurer of the said lorry are liable for payment of compensation. For the foregoing discussion, I do not find any reason to interfere with the well reasoned award of the learned Commissioner of Labour.

18. In the result, the Appeal fails and the same is accordingly dismissed. No order as to costs.

