

**HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**CIVIL MISCELLANEOUS APPEAL No. 1002 of 2009**

**JUDGMENT:**

This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, 1923 by the Appellant/Opposite Party No.1, against the Order dated 18.12.2004 in W.C.Case No.Rc.C/5234/04 on the file of the Commissioner for Workmen's Compensation and Commissioner of Labour, Kurnool Zone, at Kurnool (for short "the learned Commissioner").

2. Before the learned Commissioner, the appellant was the Opposite Party No.1, which was the Central Power Distribution Company Limited; respondent was the claimant/wife of the deceased-P.Krishnaiah. For the sake of convenience, the parties are hereby referred to as they are arrayed before the learned Commissioner.

3. The peculiar facts of the case, as per Form-1 addressed by the Divisional Electrical Engineer, Operation, Hindupur, to the Commissioner, W.C.Act, Kurnool, are as follows:

a. One farmer called the shift operator of 33/11 KV S.S.Kadiri and informed that the deceased, namely, P.Krishnaiah, who was the Lineman, Gajulavaripalli, S.S.Kadiri, aged about 36 years, employed in APCPDCL met with assassination at 23.30 hours of

05.09.2004 by some unknown persons. The shift operator, Kadiri S.S. has informed the said matter to the Assistant Divisional Engineer (Operation), Kadiri and he immediately, rushed to Gajulavariapalli SS with some other O & M staff in a department jeep. They saw the deceased with serious injuries and brought him to Kadiri and admitted to Government Hospital for treatment and therefrom, he was sent to Government Hospital, Anantapur, where he died while undergoing treatment at 06.00 hours on 06.09.2004. After conducting post-mortem examination, the body was handed over to his relatives.

**b.** The deceased –Krishnaiah was assassinated in the control room of 33/11 KV SS, Gajulavaripalli, while he was on duty on 05.09.2004.

**c.** Prior to the incident, a show cause notice was issued to the deceased by the District Collector, Anantapur that the deceased was participating in Election Campaign on behalf of the contesting independent candidate during April, 2004, for which, the deceased submitted his explanation that he did not participate in the election campaign and he went on medical leave from 09.04.2004 to 28.04.2004. He was transferred from Kadiri to Gajulavaripalli SS vide Memo dated 15.06.2004 and he joined duty at Gajulavaripalli S.S. on 15.07.2004.

**d.** The Divisional Electrical Engineer, Operation, Hindupur, *vide* letter dated 03.12.2004 to the Commissioner, for Workmen Compensation, Kurnool Zone, Kurnool, sent proposal for payment of compensation to the deceased for concurrence by enclosing the Form-I, Form-A and Calculation Sheet of compensation.

**e.** After considering the facts and circumstances of the case, the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Kurnool Zone, Kurnool, *vide L.Dis.No.Rc.C/5234/04, dated 18/12/2004*, addressed to the Divisional Electrical Engineer (Operation), Hindupur, awarded the compensation of Rs.3,89,280/- and directed to deposit the said amount by way of demand draft drawn in favour of the learned Commissioner.

**f.** Thereafter, the Divisional Electrical Engineer, (Operation), Hindupur *vide* letter dated 15.12.2005, addressed to the learned Commissioner that sanction has been received for deposit of the compensation amount of Rs.3,89,280/- before the learned Commissioner and that the higher authorities would prefer appeal against the said order before this Court.

**g.** The Divisional Electrical Engineer submitted the Demand Draft with a request not to permit the claimant to withdraw the amount until finalisation of the appeal to be filed before this Court.

**h.** The learned Commissioner issued receipt for compensation in Form-C (under Rule-6 of the Act) on 20.12.2005 acknowledging the receipt of the demand draft.

**4.** The appellant/opposite party No.1, having deposited the compensation amount by way of Demand Draft before the learned Commissioner, being aggrieved by the order of the learned Commissioner, the present appeal is preferred before this Court by raising the following substantial questions of law:

- i) Whether the Commissioner for Workmen's Compensation is justified in passing order for depositing the compensation without making any enquiry with regards to entitlement of the compensation under the Workmen's Compensation Act ?*
- ii) Whether the order dt.18.12.2004 of the Commissioner for Workmen's Compensation is correct in the light of the fact that the deceased died due to assassination but not due to risk incidental to employment ?*

**5.** Heard Sri V.R.Reddy Kovvuri, learned Standing Counsel for APCPDCL appearing for appellant and Sri O.Uday Kumar, learned counsel for the respondent.

**6.** Learned Standing Counsel for the appellant would submit that on the ground that the death of the deceased was due to assassination, the learned Commissioner without conducting any

enquiry, simply based on the particulars furnished by the employer, fixed the compensation. He would further submit that the death of the deceased though occurred while he was on duty, but it is not out of employment and that the deceased was on medical leave from 09.04.2004 to 28.04.2004 and that though the deceased died during the course of employment and it was caused by his rival group. He would submit that a show cause notice has been issued by the District Collector stating that the deceased was on election campaign along with an independent candidate and though the deceased was transferred from Kadiri to Gajulavaripalli, he died due to the attack made by the rival group. He further submits that the learned Commissioner fixed the compensation based on the letter addressed by the Divisional Electrical Engineer (Operation), admitted the liability to pay the compensation. Without there being any enquiry as to the death occurred out of and in the course of employment, the learned Commissioner accepted and calculated the compensation, which is not on correct lines.

**7.** *Per contra*, learned counsel for the respondent would submit that there are no grounds to interfere with the impugned order on the point of the liability to pay the compensation by the department. He further submits that the learned Commissioner accepted the demanded draft. In fact, the appellant/employer addressed a letter

dated 03.12.2004, along with the calculation of compensation in Form-A seeking approval of the learned Commissioner for payment of compensation. Having admitted the liability, it is not open to the appellant to prefer the present appeal against the impugned Order and prays for dismissal of the appeal.

8. As rightly argued by the learned appellant, without there being any enquiry, the learned Commissioner calculated the compensation and accepted the proposal of the department for payment of compensation. Needless to say that for claimant's compensation for the death of the deceased, the claimant has to prove the following:

- i) The relationship between the deceased and the opposite party as employee and employer;
- ii) The death of the deceased occurred out of and in the course of employment;
- iii) The claimant is the dependant to the deceased as per the Act;

9. In the present case, the claimant has not preferred any application before the learned Commissioner, but a proposal came from the department to the learned Commissioner under the Workmen Compensation Act to fix the compensation as per the provisions of the Act. It appears that after duly following the

procedure, they deposited the compensation before the learned Commissioner and then the department preferred the present appeal seeking to decide the justifiability of their act.

**10.** On the issue of out of and in the course of employment, it is pertinent to note that the learned Commissioner can entertain the jurisdiction for fixing the compensation, when there is a finding to that effect that the death of the deceased is out of and in the course of employment. Without there being any such finding, the compensation has been accepted by the learned Commissioner. A bare perusal of the order shows that no material has been placed on record to decide as to whether the death of the deceased is out of and in the course of employment. When a death occurs while the deceased is on duty, it has to be proved that there is a casual connection between the incident and his employment.

**11.** Coming to the facts of the present case, a criminal case has been lodged against accused alleging that he murdered the deceased. It is an attack by the rival group. If it comes to light that the death occurred due to the intervention of third party, which has nothing to do with the employment of the deceased, the appellant cannot be made liable to pay any compensation to the deceased under the Act. It appears, learned Commissioner without going into the enquiry, simply because, the appellant addressed a letter,

admitting the liability to pay compensation, accepted their proposal. It is not out of place to mention that along with the letter of proposal for payment of compensation, the appellant has mentioned about the manner in which the incident occurred. Such being the case, without any enquiry, accepted the payment of compensation, is not on correct lines and nothing has been placed on record to show that the death of the deceased is incidental to the employment.

12. In the result, the civil miscellaneous appeal is allowed and the matter is remanded back to the learned Commissioner for fresh consideration on the aspects referred supra and dispose of the matter expeditiously within a period of three months from the date of receipt of a copy of the Order. No costs.

As a sequel, pending applications, if any, shall stand closed.

JUSTICE VENKATA JYOTHIRMAI PRATAPA

22.12.2023

Mjl/\*



HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

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