IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

TUESDAY ,THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA

CIVIL MISCELLANEOUS APPEAL NO: 385 OF 2010

Appeal Under Section 30 of Workmen Compensation Act, against the order passed in W.C.No.27 of 2006 dated 12/10/2009 on the file of the Court of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ananthapur, Ananthapur District.

Between:

1. V.Rajani, D/o Sreenivasulu, Aged about 22 years, China Kowkuntla Village Uravakonda Mandal, Ananthapur District
2. V. Lingamma, S/o Kunchenna , Aged about 53 years, R/oChina Kowkuntla Village Uravakonda Mandal, Ananthapur District
3. V. Nagamma, W/o Linganna, Aged about 48 years, China Kowkuntla Village Uravakonda Mandal, Ananthapur District

...Appellants/Claimants

AND

1. P. Krishtappa, S/oThimmappa B.K. Samudram Village & Mandal Ananthapur District
2. The Oriental Insurance Company Ltd, rep.by its Divisional Manager Ananthapur

...Respondents/Respondents

Counsel for the Appellants: SRI. R DHEERAJ SINGH

Counsel for the Respondent No.2: SRI V RAGHU

The Court made the following:

THE HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA

CIVIL MISCELLANEOUS APPEAL No.385 OF 2010

JUDGMENT:

This Civil Miscellaneous Appeal is preferred under Section 30 of Workmen's Compensation Act, 1923 ("The Act") against the impugned order in W.C.No.27 of 2006, dated 12.10.2009 on the file the Assistant Commissioner of Labour, Anantapur ("The Commissioner").

2. The appellants herein were the claimants, Respondent Nos.,1 and 2 herein were the Opposite Parties No.1 and 2 being the employer and insurer before the Commissioner. For the sake of convenience, the parties hereinafter will be referred to as arrayed before the Commissioner.

3. Case of applicants in brief:-

Applicants are the wife and parents of the deceased/V.Srinivasulu, who was 20 years old getting Rs.3,000/- per month under the employment of the Opposite Party No.1 (O.P.No.1). The deceased died on 18.02.2005 at 06:00PM in an accident while travelling in a Tractor and Trailer bearing No.AP-02-U-1321, AP-02-U-1322. A crime was registered under Sections 337, 304-A IPC in Cr.No.18 of 2005 of Urvakonda Police Station. Applicants being dependents of the deceased sought compensation of Rs.4,00,000/- against the opposite parties.

4. Contention of Opposite Party No.1:-

O.P.No.1 being owner of the vehicle and employer to the deceased admits the relationship and death of the deceased while proceeding in a tractor as a coolie, but denies age and income of the deceased. He would submit that he insured the vehicle with Opposite Party No.2 (O.P.No.2) and as such opposite party No.2 is liable to pay compensation. He would further submit that the claim is high and excessive and prays for dismissal.

5. Version of Opposite Party No.2:-

O.P.No.2 submits that the deceased was engaged by one Kuchi Narayanappa and not the O.P.No.1, therefore contends that there is no employee and employer relationship, no premium has been paid to cover the risk of the deceased. Injured persons in the same accident filed their claims before Motor Accident Claims Tribunal and the driver of the offending vehicle had no license. Prays for dismissal of the petition.

6. In Enquiry:-

a. In the light of the rival contentions the following issues have been framed by the Learned Commissioner;

I. Whether the deceased was a workman as per the provisions of the workmen's compensation Act, 1923 and he met with the accident arising out of and in the course of his employment?
II. What was the age of the deceased workman at the time of accident?
III. What are the wages paid to the deceased workman/eligible wage at the time of accident?
IV. What is the amount of compensation payable to the applicants?
V. Who are liable to pay compensation?

b. Applicant No.1 being the wife of the deceased examined as AW1. Vadde Nagendra who is an eye witness to the occurrence examined as AW2. Ex.A1 to A8 were the documents marked in support of applicant's case. On behalf of the opposite parties, the Assistant Manager of O.P.No.2 was examined as RW1. Ex.B1 to B4 documents were marked.

c. Finding:-

The Learned Commissioner opined that the applicants failed to establish there exists any relationship of employer and employee between the opposite party No.1 and the deceased. While saying so, without answering the other issues dismissed the claim.

7. Grounds of Appeal:-

Feeling dissatisfied with the order impugned, applicants preferred this Appeal on the grounds;

a. The Learned Commissioner conveniently ignored though there is ample material on record to prove the relationship of the deceased with opposite party No.1 as employee and employer.

b. O.P.No.1 being owner himself admitted that deceased worked as a coolie and while proceeding in the Tractor the accident occurred.

c. The evidence of AW1 and AW2 clearly shows that deceased worked under O.P.No.1 as a worker as per Section 2(1) (n) of the Act.

Arguments advanced at the Bar:-

8. Learned counsel for the applicants would submit that when the owner admits the relationship with the deceased, it is not open to the Insurance Company to deny the relationship between the deceased and O.P.No.1 unless there are warranting circumstances and the action of Commissioner in dismissing the claim would defeat the very object of the Act.

9. *Per contra* the version of O.P.No.2 is that the deceased never worked under O.P.No.1. The First Information Report (Ex.A1) itself shows that the deceased travelled in the Tractor as a coolie engaged by one Kuchi Narayanappa. Therefore, the order impugned does not suffer from any infirmities warranting interference in the Appeal.

10. Substantial questions of Law:-

In the light of rival submissions, substantial questions of Law that would emerge in this Appeal are:-

(a) *Whether the order impugned is tenable in holding that there exists no employee employer relationship, despite the owner admitting such relationship?*
(b) *What is the standard of proof required in a case before the Learned Commissioner under the Act.?*

Analysis of the Court

11. Before adverting to legal intricacies of the instant case, it is apt to quote the observation made by the Hon'ble High Court of Jammu and

Kashmir in ***Senior Divisional Manager United India Insurance Company Limited v. Noora***[1]

> *"....The aim and purpose of Workman's Compensation Act, 1923 is to ameliorate the sufferings of the workman and to provide a remedy to the workman in order to save the victims of accident/from the destitution, vagrancy and, other social evils.*
>
> *7. The legislation was enacted to assuage and remedy the poverty. It is profitable to reproduce the passage from the objections and reasons for the legislation published as early in 1922.*
>
> > *"The general principles of Workmen's Compensation command almost universal acceptance, and India is now merely alone amongst civilized countries in being without legislation embodying those principles. For a number of years the more generous employers have been in the habit of giving compensation voluntarily, but this practice is by no means general. The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to Workmen, alongwith the comparative poverty of the Workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents." ..."*

12. Section 3 of the Act provides that if a personal injury is caused to workmen by accident arising out of and in course of his employment, the employer shall liable to pay compensation in accordance with the provisions. Vide catena of decisions, ingredients essential to succeed in a claim may be summed up as follows;

a. Existence of employee-employer relationship;

b. Accident to arise out of and in the course of employment;

c. Causal connection between the work, accident, and the injury;

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[1] 2005 (3) JKJ 27

d. Policy issued by the insurer covers the risks of the workman in question.

13. There is no dispute about the status of the applicants being wife and parents of the deceased and on the death of the deceased in a Tractor and Trailer of O.P.No.1. As establishing the relationship of employer and employee is *sine qua non* to succeed for getting compensation under the Act, the evidence of eye witness to the occurrence need to be scrutinized. AW2 testified before the Learned Commissioner in clear terms that the deceased worked as coolie under O.P.No.1. On other hand, he flatly denied the suggestion put by the O.P.No.2 that the deceased and others were engaged by one Kuchi Narayanappa.

14. It is apt to mention that basing on the contents of the first information report vide Ex.P1, the Learned Commissioner came to the conclusion that there exists no relationship of employee and employer between O.P.No.1 and the deceased. The author of a document is the best person to speak about the truth or otherwise of the contents therein, AW2 herein is the person who authored the complaint given to the police. Such being the case, when he came before, the Learned Commissioner gave his evidence and clarified that the deceased was engaged by O.P.No.1, the very finding of the Learned Commissioner simply basing on Ex.A1 appears to be a technical view and perverse.

15. AW1 is the wife of the deceased. She categorically deposed in replica to the contents of the petition in a chief examination affidavit. She pleaded ignorance as to the contents of the FIR which would show that the deceased was engaged by one Kuchi Narayanappa. The evidence of AW2 coupled with Ex.A1 would construe that after the accident the matter was forthwith reported to the police where Crime No.18 of 2005 of Uravakonda Police Station was registered. Nevertheless the opposite party No.1 never denied the relationship with the deceased as his employee. opposite party No.1 reported no cross examination to AW2.

16. The question as to the relationship between the deceased and the opposite party No.1 is no doubt completely based on the factual aspects of the matter. The evidence of RW1 has no relevance to answer this point since he is not an eye witness to the incident. He is the officer of the Insurance Company deposed as per the record.

17. When opposite party No.1 never disowned the relationship with the deceased in absence of any extraordinary circumstances to show that it is a case of fraud or cheating it is not left open to the Insurance Company to deny it. In addition to that the author of Ex.A1 in vivid terms deposed before the authority that the deceased was not engaged by Kuchi Narayanappa, the finding of the Learned Commissioner ignoring such evidence but only relying on a stray sentence in Ex.A1 wrongly concluded

that there is no relationship of employer and employee. A Co-ordinate Bench of the Hon'ble High Court of Andhra Pradesh in ***United India Insurance Company Limited Kadapa v. Obili Venkatadasu and others***[2], at Para-12 held as follows:-

> *"Another aspect of the matter is that, to be covered under the Act, it is not necessary that a person must be appointed on regular basis. Even a casual worker answers the description of the workman, under the Act. Once the employer admits the factum of employment, it is not at all open to the insurer to doubt those facts".*

18. In the present case, inspite of ample evidence placed on record the Learned Commissioner lost sight of it and jumped to the conclusion that there exists no relationship which goes to the route of the case and would defeat the very object of the Act. Except the general denial of employer employee relationship in the counter, O.P.No.2 has not adduced rebuttal evidence to substantiate its stand or to improbabalise the stand taken by the applicants. Needless to say, the denial of the claim by itself would not amount to proof of the stand taken. Except basing on a stray sentence in Ex.A1 nothing has been placed on record to support that to buttress their contention.

19. Under Section 23 of the Act, the Commissioner has all the powers of a Civil Court under the Code of Civil Procedure, 1908 Section 25 of the Act provides the method of recording evidence. It states that the Commissioner

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[2] C.M.A.No.350/2011 Dated 19.04.2011- High Court of Andhra Pradesh

shall have to make a brief memorandum of the substance of evidence of every witness as it proceeds and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record. In the context of the Motor Vehicles Act, 1988, which is also a beneficial legislation, it was held in ***Rajwati @ Rajjo & Ors. v. United India Insurance Company Ltd. & Ors.***[3] that while dealing with the compensation cases, once the actual occurrence of the accident is established, the role of the Tribunal would be to award compensation which is just and reasonable. Strict rules of evidence as in a criminal trial cannot be applied in compensation cases and the standard of proof is of "Preponderance of probability".

20. The burden initially though on the applicants is not static. The evidential burden always shifts to the other party when the petitioning party fulfills the prime requirements i.e., the foundational facts based on which the claim is filed. Such being the case the approach of the learned Commissioner appears to be a hyper technical which would defeat the very object of the Act.

21. This being an Appeal filed under section 30 of the Act unless there is substantial question of law appeal is not maintainable. Though the question in the Appeal completely revolving upon the factual matrix of the case, since

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[3] [2022] 17 S.C.R. 845

it is the foundation and basic requirement to maintain the claim, this Court is of the view that the Appeal is maintainable. If a question of law arising between the parties is of arguable nature, then that will be a good ground of appeal under Section 30.

22. Apart from that, if the Commissioner while arriving at the finding of the fact has overlooked the material evidence or has relied upon inadmissable evidence or has applied the law wrongly or his finding is based on no evidence or is based on only conjecture and surmises or has overlooked the statutory provision or misconducted the same, then such question for the purpose of Section 30 will be said to be the substantial question of law, vide ***Sumitra Devi vs. Executive Engineer, U.A.Irrigation Division, Gaya***[4]. Therefore, this Court deems it fit to hold that the findings of the learned Commissioner have clearly overlooked the material evidence on record and the Appeal is maintainable.

23. In the light of the aforesaid discussion, and in the back drop of the legal position referred to *supra,* there is no option left to this Court except to remand the matter to the learned Assistant Commissioner of Labour, for fresh disposal of the matter in accordance with law.

24. Accordingly, the Civil Miscellaneous Appeal is allowed and the matter is remanded to the learned Assistant Commissioner of Labour, Anantapur,

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[4] 1997 (3) LLJ (Supp) 1058

for disposal of the case afresh based on the evidence on record, within a period of two (02) months, from the date of the receipt of copy of this order.

As a sequel, interlocutory applications pending, if any, in this Civil Miscellaneous Appeal shall stand closed.

Sd/- P VENKATA RAMANA
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One Fair Copy to the Hon'ble Smt. Justice Venkata Jyothirmai Pratapa
(for Her Lordship's kind perusal)

To,

1. The Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ananthapur, Ananthapur District. **(with records if any)**
2. One CC to Sri. R Dheeraj Singh, Advocate [OPUC]
3. One CC to Sri. V Raghu, Advocate [OPUC]
4. Nine (09) L.R. Copies.
5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
6. The Secretary, Andhra Pradesh High Court Advocate's Association Library, High Court Buildings, Amaravathi.
7. The Section Officer, V.R Section, High Court of Andhra Pradesh at Amaravati.[OUT]
8. Three CD Copies

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HIGH COURT

DATED:28/02/2023

ORDER

CMA.No.385 of 2010

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ALLOWING THE CIVIL MISCELLANEOUS APPEAL