

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

CIVIL MISCELLANEOUS APPEAL NO.236 OF 2023
(CMA(SR) No.7012 OF 2008)

JUDGMENT:

Today I.A.No.1 of 2008 (CMA MP No.335 of 2008) is allowed, delay of 25 days is condoned in filing the appeal. This Civil Miscellaneous Appeal is filed by the appellant/opposite party No.2. i.e. the insurance company assailing the order dated 28.11.2007 in W.C.No.120 of 2005, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, RTC Cross Roads, Hyderabad on the following grounds:

(a) The alleged death did not occur in the course of employment. Thus, fastening the liability on the insurance company is against the principles of law.

(b) Learned Commissioner has failed to appreciate the fact that the death occurred due to drowning of the deceased cleaner while he was swimming in the lake and it was nothing to do with his employment. Therefore, the finding recorded by the Tribunal that the alleged death occurred in the course of employment is erroneous and the Commissioner erred in

fastening the liability on the insurance company and it is bad in law.

(c) The tribunal failed to appreciate the material available on record and arrived at a wrong conclusion, which is against the facts and law.

2. Heard learned counsel for the appellant and opposite party No.2 and perused the order impugned in W.C.No.120 of 2005.

3. The Tribunal in the course of enquiry has examined A.Ws.1 and 2 on behalf of the claimants / applicants and got marked Exs.A1 to A6. Whereas, on behalf of opposite party No.2 / insurance company RW1 is examined, Ex.B1 is marked. The tribunal framed three points. Point No.1 deals with as to whether death of the deceased was during the course of and out of his employment on the lorry bearing No.ABB 9165. This point was answered in favour of the claimants. Essentially this aspect of the order impugned is under challenge.

4. I have given my thoughtful consideration to the material available on record and carefully perused the

order impugned dated 28.11.2007. Be it stated that on behalf of the claimants/applicants AWs.1 and 2 witnesses were examined. AW1 is the wife of the deceased cleaner. In her evidence Exs.A1 to A6 documents were marked. This witness was cross-examined by opposite party No.2, the insurance company and she has denied the entire suggestions. Sri Mohd.Mustafa is examined as AW2, he filed his evidence affidavit in lieu of chief-examination. Though this witness was cross-examined at length on behalf of the insurance company, nothing worth mentioning is elicited. On the other hand, RW1, who is the Legal Officer of the opposite party No.2 is examined. In his cross-examination, the witness accepted that the deceased was working as a cleaner on the insured lorry and cleaning of the vehicle is part of his duties and that he does not know when the duty of the cleaner starts. He denied the other suggestions given to him.

5. Ex.A1 is the certified copy of First Information Report in Crime No.193 of 2005 of Shameerpet dated 10.09.2005. It was issued basing on the statement given by Mohammed Abbas Khan, brother-in-law of deceased.

Ex.A2 is the certified copy of inquest panchanama conducted over the dead body of deceased cleaner. On a careful perusal of both these documents, it is revealed that the deceased was a workman, working as cleaner on the lorry bearing No.ABB 9165, the incident occurred on 09.09.2005, after cleaning the lorry along with the driver, in the course of his employment, the deceased/cleaner drowned into the water while he was cleaning his body. Contents of Exs.A1 and A2 in this aspect are supported by the oral evidence of AWs.1 and 2. As per the inquest report and as per the post-mortem examination report, the cause of death of the deceased is not in dispute. The deceased / cleaner died due to drowning. It is also an undisputed fact that the deceased was working as a cleaner over the said lorry bearing No.ABB 9165.

6. The Court below while interpreting the phrase “arising out of employment” has placed reliance on the principles laid in **2004 ACJ 1639** of Karnataka High Court and **2005 LLR 957** by a Division Bench of Kerala High Court and observed in paragraph No.19 of the order impugned that in a similar circumstance when a driver

died in the course of employment by falling into a well and drowning into water, the Karnataka High Court has held that the accident has arisen out of and in the course of employment and the dependents of the deceased are entitled for compensation. A Division Bench of Kerala High Court in the decision cited in paragraph No.19 of the order impugned held that the conductor of the bus, who has stayed at petrol bunk, went to stream for taking bath along with driver and died due to drowning, which was treated as a part of his employment. In the case on hand also undisputedly the deceased was a cleaner on the said lorry. The deceased along with driver of the vehicle have cleaned the said lorry and thereafter they were taking bath in the same lake where the lorry was cleaned and unfortunately the deceased died due to drowning. Thus, immediately after cleaning the lorry, the deceased was getting bath in the same lake. There is direct nexus between the act of cleaning the lorry and the cleaner taking bath in the same lake. Therefore, such act of deceased taking bath in the same lake where the vehicle was cleaned immediately after cleaning the lorry along with driver of the said vehicle has

arisen only in the course of and out of his employment and there is direct nexus between the employment and the death of the deceased. As such, viewed from any angle, I do not find any irregularity or illegality in the finding recorded by the Court below. The oral and documentary evidence discussed above would establish that on 09.09.2005 the deceased died when drowned in the lake where he along with the driver have cleaned the vehicle and immediately thereafter they were taking bath and it amounts that the incident occurred out of and in the course of employment of the deceased under the employment of opposite party No.1 and entitled for compensation.

7. The insurance company has not disputed the quantum of compensation, they have only disputed their liability stating that the deceased taking bath in the same lake immediately after cleaning the lorry is not in the course of or arising out of his employment. Be it stated that there is a direct nexus of deceased cleaning the lorry and cleaning his body in the very same lake and that it amounts to an accident that has arisen in the course of

and out of his employment. The trial Court has rightly appreciated the oral and documentary evidence available on record and arrived at a correct conclusion. The order impugned does not warrant any interference by this Court and it is sustained.

8. In the result, the Civil Miscellaneous Appeal is dismissed as devoid of merits and consequently the order impugned dated 28.11.2007 in W.C.No.120 of 2005, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, RTC Cross Roads, Hyderabad is confirmed in its entirety. In the circumstances of the case, there shall be no order as to the costs. Miscellaneous applications, if any pending, shall stands closed.

A.VENKATESWHARA REDDY, J

17-10-2022

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