



IN THE HIGH COURT OF ANDHRA PRADESH: AT AMARAVATI

CIVIL MISCELLANEOUS APPEAL No.202 OF 2010

Between:-

DIVISIONAL MANAGER UNITED INDIA INS CO LTD KADAPA
The United India Insurance Company Limited
D No 21/72 Dwaraka Towers Seven Roads

...Appellant

AND

1. D HARIJANA USENAPPA AND 3 OTHERS
S/o Lakchappa R/o Pinnepalli Village Yadaki Mandal Anantapur
2. D Harijana Kulleyamma
W/o Lakchappa R/o Pinnepalli Village Yadaki Mandal Anantapur
3. D Harijana Lakshmidevi
D/o Lakchappa minor rep by her father Appe No 1 R/o Pinnepalli Village
Yadaki Mandal Anantapur
4. C Yerrapa Reddy
S/o Pakeera Reddy Maddipalli Village Putluru Mandal Anantapur Dist

...Respondents

DATE OF JUDGMENT PRONOUNCED: 10.05.2023

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgments?
2. Whether the copies of judgment : Yes/No
may be marked to Law
Reports/Journals?
3. Whether Their Ladyship/Lordship : Yes/No
wish to see the fair copy of the
Judgment?

VENKATA JYOTHIRMAI PRATAPA, J.



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

+ Civil Miscellaneous Appeal No.202 of 2010

% DATE: 10.05.2023

Between

DIVISIONAL MANAGER UNITED INDIA INS CO LTD KADAPA
The United India Insurance Company Limited
D No 21/72 Dwaraka Towers Seven Roads

... Appellant

Vs.

D HARIJANA USENAPPA AND 3 OTHERS
S/o Lakchappa R/o Pinnepalli Village Yadaki Mandal Anantapur

... Respondents

! Counsel for the petitioner : Sri N.RAMAKRISHNA

^Counsel for respondents : Sri I.VENKATA PRASAD

< Gist:

➤ Head Note:

?CASES REFERRED:

- 1) 2019 13 SCC 806
- 2) United India Insurance Company Limited Kadapa Vs
Obili Venkatadasu and others



THE HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA
CIVIL MISCELLANEOUS APPEAL No.202 OF 2010

JUDGMENT:

1. This Civil Miscellaneous Appeal is preferred under Section 30 of Workmen's Compensation Act, 1923 (in short 'The Act') against the impugned order dated 12.08.2009 in W.C. No.5 of 2007 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Anantapur (hereinafter be referred to as "the Commissioner").

2. The appellant herein was the Opposite Party No.2 and respondent Nos.1 to 3 herein were the applicants and Respondent No.4 was the Opposite Party No.1 before the learned Commissioner.

For the sake of convenience, the parties hereinafter will be referred to as they arrayed before the learned Commissioner.

3. **The case of the appellant in brief is that,**

The applicants being the parents and unmarried sister of the deceased D.Harijana Lakshmaiah filed the claim petition before the learned Commissioner for a compensation of Rs.4,00,000/- for the death of the deceased occurred during the course of employment while attending the loading of earth material to the



fields of Opposite Party No.1. Opposite Party No.1 being the owner of the tractor filed counter denying the petition averments. He further stated that on 14.05.2006, deceased and one Venkata Ramudu were attending their regular work to the tractor and trailer for loading earth material on the instructions of the Opposite Party No.1 given to the driver of the vehicle. The accident occurred on the negligence of the deceased. He is not liable to pay any compensation. The vehicle is insured with Opposite Party No.2.

4. **Version of the Opposite Parties:**

Opposite Party No.2 filed counter denying the petitioner's claim. There is no employee and employer relationship between Opposite Party No.1 and the deceased. Deceased was not a workman under Opposite Party No.1.

5. **Issues – Enquiry – Finding:**

(a) Basing on the rival pleadings of both parties, learned Commissioner framed the following issues for consideration.

1. 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?
2. What was the age of the deceased workman at the time of accident?



3. What are the wages paid to the deceased workman / eligible wage at the time of accident?
4. What is the amount of compensation payable to the applicants?
5. Who are liable to pay compensation?

(b) During the course of enquiry, the first applicant who is the father of deceased was examined as AW.1. C.Venkata Ramudu who also worked along with the deceased examined as AW.2. Exs. A1 to A6 were the documents marked. On behalf of insurance company, RW.1 was examined and got marked Ex.B1-Policy.

(c) After hearing both the counsel and on appreciation of the evidence on record, the learned Commissioner awarded compensation of Rs.2,30,048/- with interest at 12% per annum from the date of accident against the Opposite Parties. In case of failure of paying compensation, learned Commissioner also directed the Opposite Parties to deposit the amount within 30 days from the date of receipt of the order. If they failed to deposit, they have to pay penalty that may be imposed under Section 4(3) of the Act.

6. **Substantial questions of law:**

Feeling aggrieved and dissatisfied with the order impugned, the insurance company preferred the present appeal on the grounds that the applicants failed to prove the employee employer



relationship between the deceased and Opposite Party No.1. Even as per the contents of the FIR-Ex.A1, the learned Commissioner fastened the liability to pay interest from the date of accident on the appellant which is contrary to law. In the memo of appeal, the substantial question of law raised by the appellant is, whether any employee and employer relationship is established in the case?

7. Heard Sri N.Rama Krishna, learned counsel for the appellant and Sri I.Venkata Prasad, learned counsel for the respondents.

8. **Legal Position:**

(a) Needless to say that, unless there exists any substantial question of law, appeal cannot be entertained as per Section 30 of the Act. It is a case of the claimants that, their son D.Harijana Lakshmaiah aged about 19 years died while discharging his duties as a cooly for the tractor of Opposite Party No.1. Claimant No.3 is an unmarried sister of the deceased. It is apt to say that, to maintain the claim petition, claimants have to establish that there exists a relationship of employee and employer between the Opposite party No.1 and the deceased and the death of the deceased occurred during the course and out of the employment.



(b) In ***Fazlu Rahman Ansari v. National Insurance Company Ltd. &Ors.***,¹ the Hon'ble Supreme Court while dealing with an appeal against an order passed by Hon'ble Single Judge under Section 30 held that, it is impermissible for the High Court to illegally interfere with the finding of fact arrived by the Commissioner based on recorded evidence, when the appeal was devoid of a substantial question of law.

9. In the present case, Opposite Party No.1 - the owner filed counter though denying the age and monthly income of the deceased, but admitted that on 14.05.2006, the deceased Harijana Lakshmaiah along with Venkata Ramudu were attending their regular cooly work to the tractor and trailer for loading earth material to the fields of Opposite Party No.1 on the instructions given by him to the driver of the vehicle, the accident occurred. According to this owner, accident occurred due to the negligence of the deceased himself. It is pertinent to note that the negligence of deceased if any is not a ground to discard the claim under Workmen's Compensation Act because it is not recognized under law.

¹ 2019 13 SCC 806



10. Opposite Party No.1 filed counter, but did not choose to give any evidence in the matter before the Commissioner. The first applicant being the father of the deceased categorically deposed that, his son along with others while attending the work of loading and unloading the sand to the tractor and trailer of Opposite Party No.1 at about 12.30 P.M. on 14.05.2006, suddenly a lump of sand fell upon him resulting which he sustained injuries and while taking treatment in the hospital, he died. Opposite Party No.1 also informed that his tractor and trailer had been insured with Opposite Party No.2 for its labour also. It is not the case of the insurance company that they have not issued the policy covering the risk of the deceased. There is no dispute about the fact that Opposite Party No.1 is the owner and the best person to speak about the relationship between the owner and the employee is Opposite Party No.1. In the counter itself, he never denied such relationship. Furthermore, the counter averments would show that on his instructions only, the work was employed. AW.2 is a third party who also worked as cooly under Opposite Party No.1. He also attended the work along with deceased on that fateful day i.e. on 14.05.2006. According to him, the deceased Lakshmaiah and himself worked for the tractor of Opposite Party No.1. While the deceased digging sand, suddenly



sand lumps fell upon the deceased, one Ramudu who was the driver of the tractor shifted the deceased to Government Hospital, Tadipatri. Nothing has been elicited by cross examining AW.2 to discredit his testimony. On behalf of insurance company, RW.1 deposed that the policy is in force as on the date of the accident. He admitted that he has not filed any record to show that the deceased worked as cooly under one Gopal. He added that, FIR clearly discloses that deceased worked under one Gopal.

11. As seen from Ex.A1 - FIR which is registered basing on the statement of the deceased Harijana Lakshmaiah would show that on 14.05.2006 along with other coolies, he was attending the work on the bank of river Penna, while attending the said work of the tractor which belongs to Opposite Party No.1, the accident occurred. It is profitable to refer the decision of the Coordinate Bench of this Court in ***United India Insurance Company Limited Kadapa Vs Obili Venkatadasu and others***, 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”.



12. In the light of the judgment referred supra, when the owner himself admitting the relationship with the deceased as employee it is not for the insurance company to take such a plea of denying such relationship. Accordingly, the substantial question of law is answered. Appeal is devoid of merits.

13. In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, both parties shall bear their own costs.

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

VENKATA JYOTHIRMAI PRATAPA, J.

Date : 10.05.2023

Note: L.R. Copy to be marked
B.O./PND