

**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

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**C.M.A. No.1010 of 2008**

Between:

Nandi Rambabu.

**.... Appellant**

**And**

1. M.Jagan Mohan Rao and another.

**...Respondents.**

Date of Order pronounced on : 16.02.2023

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

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

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**JUSTICE VENKATA JYOTHIRMAI PRATAPA**

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

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# Nandi Rambabu.

**.... Appellant**

**And**

1. M.Jagan Mohan Rao and another.

**....Respondents.**

! Counsel for the Petitioner : Sri A. RAMA KRISHNA,

Counsel for the Respondents: Sri B.Devanand for respondent  
No.1

Prasad

Ms. A.Jayathi and Sri G.Satya  
for Respondent No.2.

<Gist :

>Head Note:

? Cases referred:

- 1) (2005) ACJ 1175,
- 2) (2022) 17 S.C.R. 845.

**THE HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA**  
**CIVIL MISCELLANEOUS APPEAL No.1010 OF 2008**

**JUDGMENT:**

This Civil Miscellaneous Appeal is preferred under Section 30 of Workmen's Compensation Act, 1923 (in short "The Act") against the impugned order in W.C.No.25 of 2002, dated 20.03.2002 on the file of the Assistant Commissioner of Labour Circle II, Visakhapatnam (in short "The Commissioner").

**2.** The Appellant herein was the applicant, Respondent Nos., 1 and 2 were Opposite Party No.1 (Owner) and Opposite Party No.2 (Insurance Company) before the Commissioner. For the sake of convenience, the parties herein after will be referred to as arrayed before the Commissioner.

**3. Case of the applicant:-**

On 19.01.2001, while working as a driver to the tourist bus of Opposite Party No.1 bearing No. AP-31-5-3288 scheduled from Shabarimalai to Visakhapatnam, at Tirupati he tried to get spare tyre from the top with a rope, it got cut off and he fell down from the top and sustained injuries. As instructed by the owner of the bus over a

phonecall, he was brought to Anakapalli for treatment and obeying the instructions of the owner, he did not give any information to the police. Thereafter, he was taken to King George hospital on 22.01.2001 for better treatment. Applicant approached the Learned Commissioner seeking compensation for an amount of Rs.75,000/- against the opposite parties.

#### **4. Contention of Opposite Party No.1 & 2:-**

Opposite Party No.1 contends that he is the owner of the bus till April, 2002, that the applicant is a worker in some other vehicle, that he never employed the applicant to his bus. He would submit that his bus went to Shabarimalai only once in January, 2001 with Sri N.Srinivasa Rao and Sri K.Appal Raju as the drivers, no accident occurred during that trip and no cleaner accompanied the drivers. Whereas, Opposite Party No.2 contends that since Opposite Party No.1 confirmed that the applicant never worked under him, they are not liable to pay any compensation.

#### **5. Issues, Enquiry and Finding:-**

(a) In the light of rival contentions, the Learned Commissioner framed the following issues:-

1. *“Whether there exists employer and employee relationship between the opposite party No.1 and applicant”?*
2. *“If so, whether the applicant sustained injury resulting in disability during the course of employment or not”?*
3. *“If so, to what extent of compensation the applicant is entitled to”?*

**(b)** During the course of enquiry, Sri G.Thrimurthulu who was an eye witness to the occurrence was examined as AW2. He spoke to the effect that while he was helping the driver in pulling the tyre from the top of the bus, the rope got cut off suddenly and the applicant fell from the top of the bus, got injured. Ex.A1 to A9 were the documents marked. On behalf of OP.No.1, he himself examined as RW1. Ex.B1 and B2 were the documents marked. No oral evidence adduced on behalf of Opposite Party No.2.

**(c)** The learned commissioner dismissed the claim opining that the applicant failed to establish the relation as employer and employer with O.P.No.1, that no first information report or wound certificate was filed, that AW2 failed to submit any proof that he travelled in that bus, and that the applicant failed to explain the necessity for the third worker in the bus.

6. Feeling dissatisfied and aggrieved by the order impugned, the applicant carried the matter in the Appeal on the following grounds that the Commissioner has failed to appreciate the evidence on record to establish the employee-employer relationship between applicant and O.P.No.1, that he suffered a spinal injury during the course of employment, that on his behalf, AW.2 who travelled as a passenger/pilgrim deposed that the applicant worked as cleaner and driver at times.

**Arguments at the Bar:-**

7. Learned counsel for the appellant would submit that there is ample evidence on record to show that the applicant worked under O.P.No.1. The evidence of A.W.1 and A.W.2 coupled with the admissions made by R.W.1, the owner, would clearly prove that applicant was a workman under the opposite party No.1.

8. Learned counsel for the O.P.No.2 submits that the applicant failed to prove the mandatory requirements under the Act to succeed in his claim for compensation. As there exists no employer-employee relationship between the applicant and O.P.No.1, the Learned Commissioner rightly dismissed the claim. He would submit that the

Order impugned does not suffer from any infirmities warranting interference in the Appeal.

**9.** In the light of the arguments advanced the substantial questions of law would emerge the determination in this Appeal are:-

- a. *“What is the standard of proof required under the Act on the injured employee/applicants to prove the necessary ingredients to succeed in a claim for compensation”?*
- b. *“Whether the order impugned is in accordance with the provisions of the Act”?*

**Point No.1:-**

**10.** The Act, 1923 is a social security and welfare legislation. The Act has a noble objective of fostering safety and security of the employees in view of the rapid technological advances in the industry. It is a settled law that the pivotal intention of the Act is to make the employer/ insurer responsible against the loss caused by injuries or by death, that may unfortunately take place during the course of work and that the Compensation provided under the Act is in nature of insurance and not a remedy for negligence as viewed in ***Sunita Devi vs Autar Singh and Anr.***<sup>1</sup>

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<sup>1</sup> 2005 ACJ 1175

**11.** 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 be liable to pay compensation in accordance with the provisions. Vide catena of decisions, the 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;
- d. Policy issued by the insurer covers the risks of the workman in question.

**12.** Under Section 23 of the Act, the Commissioner has all the powers of a Civil Court under the Code of Civil Procedure, 1908 for the purpose of taking evidence on oath and enforcing the attendance of the witnesses and compelling the production of documents and material objects and the Commissioner is also deemed as a Civil Court. Section 25 of the Act provides the method of recording evidence. It states that the Commissioner 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. Section 30 of the Act provides for an Appeal to the High Court from orders of the Commissioner enumerated therein, with a stipulation that there must be a substantial question of law.

**13.**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.*<sup>2</sup> 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".

**14.**The underlying purpose of the Act 1923 is to make provision for a workman who is disabled from earning by work. The Act has to be broadly and liberally construed in order to effectuate the same. The provisions of the Act have to be interpreted in a manner which advances the object of the legislation contemplated in the statement of objects and reasons and attempt should be made to avoid putting interpretations which result in defeating them.

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<sup>2</sup> [2022] 17 S.C.R. 845

**15.**In this light, the standard of proof in the cases under Workmen's Compensation Act, 1923 has to be preponderance of probability i.e., what is more rational and probable in the view of the matter, but not strict proof beyond reasonable doubt. The summary of the relevant provision relating to the procedure followed by the Commissioner would indicate in vivid terms that the Act provides for an expeditious settlement of disputes as to the liability of the employer to pay compensation and the recovery of the compensation in case the opposite parties fail to pay the same. The Commissioner shall keep in mind the object of the Act while discharging his duties to adjudicate a claim preferred before him as per Section 20 of the Act.

**16.**In the instant case, right from the start, the applicant contends that he was helping the driver in pulling the tire from the top of the bus and he sustained injuries in the accident. The driver having informed the owner, was instructed not to give report to the police as it might stall the bus causing inconvenience to the pilgrims. Accordingly, applicant was taken to Anakapalli hospital for treatment, vide Ex.A1. Ex.A2 would show that he sustained injuries due to slip from the foot-board of the bus.

**17.**It was elicited in the cross examination of R.W.1 that the applicant knows his workmen, and from them he might have acquired C-Book copy and Insurance Policy from register. The Learned Commissioner dismissed the claim observing that the applicant should have filed the trip sheet and permit copies whereas A.W.2 has filed no proof to show that he was a passenger and the necessity of third worker is not explained

**18.**RW1 in Cross-examination denied that the applicant is a worker. When the photo of the applicant was confronted to RW1 he stated that, he is Mr.Nandi Rambabu, who is a worker in some other van, aged about 55 to 56 years. The bus went to Shabarimalai in January, 2001 only once, N.Srinivasa Rao and K.Apparao were the drivers and no cleaner went in that bus and no accident occurred in the trip. The fact remains that opposite party No.1 knew the applicant.

**19.**In the light of the legal position referred *supra*, the standard of proof required for the workman to prove the existence of a worker and owner relationship is based on preponderance of probability. It appears the Learned Commissioner viewed the case as if the applicant has to prove the necessary ingredients as per Section 3 of the Act beyond all reasonable doubt like in a Criminal Case.

**20.** Needless to say that, the enquiry before the Learned Commissioner, is summary in nature. He need not even record the evidence word to word as he can record the substance of the evidence deposed by the witness. Such being the scenario, the appreciation made by the Learned Commissioner on the material evidence produced before him, in this enquiry appears to be pedantic.

**21.** Moreover, both the learned counsel fairly conceded that, it is a fit matter to be remanded to the Learned Assistant Commissioner of Labour, Visakhapatnam, under Workmen's Compensation Act, to consider the case afresh and dispose of the case as per law by giving fair opportunity to both the parties to adduce any evidence, if any required.

**22.** It is appropriate to mention here that, in case if the petitioner is found eligible for the compensation, the interest need to be paid by the owner only for the reason that he denied the existence of relation of the workman which led to inordinate delay and such a liability cannot be fastened against the Insurance Company on the point of interest from the date of the accident till the date of disposal of this Appeal.

**23.** In result, the Civil Miscellaneous Appeal is disposed of and the matter is remanded to the Learned Commissioner under Workmen's Compensation Act, for disposal of the case afresh by giving opportunity to both parties to adduce any evidence as per law. Both parties shall bear their own costs.

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

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**JUSTICE VENKATA JYOTHIRMAI PRATAPA**

Date: 16.02.2023

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