

(2010) 07 AP CK 0008

Andhra Pradesh High Court

Case No: C.M.A. No. 383 of 2010

United India Insurance Company
Limited

APPELLANT

Vs

Smt. Saberabee

RESPONDENT

Date of Decision: July 9, 2010

Acts Referred:

- Workmens Compensation Act, 1923 - Section 30

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: Naresh Byrapaneni, for the Appellant; N. Parthasarathy, for RR1 to 3, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The Respondents 1 to 3 filed W.C. No. 106 of 2003 before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-II, Hyderabad (for short "the Commissioner") against the 4th Respondent and the Appellant, claiming an amount of Rs. 2 lakhs, as compensation. It was pleaded that Sri Moijuddin, husband of the 1st Respondent, father of 2nd Respondent, and son of the 3rd Respondent, was engaged on 13-05-2000, for loading of timber into a lorry bearing No. ABT-9679, owned by the 4th Respondent, and insured with the Appellant, and in the course of employment, he died, out of fatigue. It was pleaded that he was being paid emoluments at Rs. 100/- per day, and that he was aged 40 years.

2. The 4th Respondent filed a counter, denying the very factum of employment, or engaging the deceased. He pleaded that his lorry was hired by one Mr. Omar Sab for transporting wood from Allapur Village, and that when the labourers were loading the lorry with timber, the deceased suddenly came under the influence of

epilepsy, and died due to the subsequent cardiac arrest.

3. The Appellant also filed a counter, denying the allegations in the case. They too have denied the existence of relationship of employer and employee, between the deceased and the 4th Respondent. Other grounds were also urged. Through his order dated 03-08-2009, the Commissioner awarded a sum of Rs. 1,46,324/-, as compensation. The same is challenged in this C.M.A., filed u/s 30 of the Workmen's Compensation Act (for short "the Act").

4. Sri Naresh Byrapaneni, learned Counsel for the Appellant submits that there was absolutely no relationship of employer and employee between the deceased and the 4th Respondent, and that the provisions of the Act have no application. He contends that, when according to the 1st Respondent herself, the deceased was a daily labourer, and that she does not know where and by whom he was engaged, at the relevant date, and the very claim was untenable.

5. Learned Counsel for the Respondents 1 to 3, on the other hand, submits that, even where an individual is engaged as labourer for an activity of loading and unloading, the provisions of the Act get attracted to such persons. She contends that there is no denial of the fact that the deceased was engaged for the purpose of loading, and the Appellant is liable to shoulder the claim, that arises against the owner of the vehicle. She places reliance upon the judgment of Karnataka High Court in [United India Insurance Co. Ltd. Vs. Puttappa @ Puttanna and Kempamma and N. Lakshman,](#)

6. Normally, in cases of this nature, the owners of the vehicle remain ex parte, and the entire burden, to defend, rests upon the Insurance Companies. This is a rare case, where the owner of the vehicle entered appearance, and put forward his contention, by filing a counter. The W.C. case was filed by alleging that the deceased was engaged by the 4th Respondent for loading of the wood. The evidence of AW-1, the 1st Respondent herein, is hardly of any use. For all practical purposes, she pleaded ignorance, as to the exact avocation or engagement of the deceased. In his counter, the 4th Respondent stated that he hired the lorry to one Mr. Omar Sab, and the latter, in turn, arranged for loading of the lorry with timber. These facts remained un rebutted. Even if it is assumed that the deceased was engaged for loading of the wood, the engagement was, by Omar Sab, and not by the 4th Respondent.

7. There is any amount of uncertainty as to the cause of death of the deceased. It is stated to be on account of epilepsy, and another version is that he died due to serious sun-stroke. Either way, if the death took place during the course of employment, by the owner of the lorry, things would have been different. The 4th Respondent has absolutely no concern with the engagement of the deceased for loading, and it was just the look out of the person, who took the lorry on hire.

8. Learned Counsel for the Respondents 1 to 3, placed reliance upon the judgment in *United India Insurance Co. Ltd., v. Puttappa* (1 supra). That was a case in which labourers were engaged by the owner of a Tractor, for loading and unloading of the sand. One of the labourers died on account of the accident, due to rash and negligent driving of the driver of the tractor. It was held that the labourer engaged for loading and unloading, by the owner of the tractor, would be attracted by the provisions of the Act, in the event of any accident, involving tractor, and resultant injury to, or death of the workers, so engaged. Such is not the case here. Admittedly, no accident, as such has taken place, involving the lorry, in this case. Secondly, the owner of the lorry did not engage any labourer, and the lorry itself was hired by a third person. Under these circumstances, the order passed by the Commissioner cannot be sustained in law.

9. Accordingly the appeal is allowed, and the order under appeal is set aside. It is however directed that the amount, if any, withdrawn by the Respondents 1 to 3, shall not be required to be refunded.

10. There shall be no order as to costs.