

*** THE HON'BLE SRI JUSTICE NYAPATHY VIJAY**

C.M.A.No.1167 of 2011

% 07.03.2025

Smt. Shaik Asrifoon & 2 others Appellants

Versus

\$ Guddanti Vijaya Krishna & Another Respondents

! Counsel for the Appellants : Sri T. Prasanna Kumar

! Counsel for the Respondents : M/s. K.N. Laxmi and M/s A. Malathi

< Gist:

> Head Note:

? Cases referred:

¹ Nil

HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**C.M.A.No.1167 of 2011**

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DATE OF ORDER PRONOUNCED: 07.03.2025

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE NYAPATHY VIJAY

- | | |
|---|--------|
| 1. Whether Reporters of Local Newspapers may be allowed to see the Order? | Yes/No |
| 2. Whether the copies of Order may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Your Lordship wish to see the Fair Copy of the Order? | Yes/No |

NYAPATHY VIJAY, J

APHC010048202011



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3460]

FRIDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL MISCELLANEOUS APPEAL NO: 1167/2011

Between:

Smt. Shaik Asrifoon & 2 Others

...APPELLANT(S)

AND

Guddanti Vijaya Krishna and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1.T PRASANNA KUMAR

Counsel for the Respondent(S):

1.A MALATHI

2.K N LAXMI

The Court made the following:

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY**CIVIL MISCELLANEOUS APPEAL NO.1167 of 2011****JUDGMENT:**

1. The present C.M.A is filed under Section 30 of Workmen's Compensation Act, 1923 questioning the Order dated 11.01.2010 in W.C.No.3 of 2009 passed by the Commissioner of Labour for Workmen's Compensation, Ongole, Prakasam District.

2. The Claimants are the Appellants herein.

3. The facts leading to filing of the present are as follows:-

The claim application was filed by the wife and two minor daughters of one Shaik Masthan @ Mastan Vali (hereinafter referred to as '*deceased*'). The deceased was working as a Cleaner on Lorry bearing No.AP-27-V-9007 owned by O.P.No.1.

4. On 17.09.2008, the deceased along with the Driver Pathan Yasin and Water Plant Helper Gudipudi Siva started from Akkayapalem Water Plant at 8.45 a.m. to go to Ongole as per the instructions of O.P.No.1. When the vehicle reached Vetapalem, near Kotta Kaluva bridge, a Tractor bearing No.AP-27-U-6733 was coming towards Vetapalem from Pandillapalle with a sand load and entered on to the bridge in a rash and negligent manner and almost hit the lorry in which the deceased was travelling. There was an altercation between the lorry driver along with the deceased and the driver of the tractor.

5. In the exchange of words between them, one R.T.C. Bus, which stopped behind the tractor, was continuously blowing horn and the tractor driver with an intent to give way drove the vehicle at that place without looking at the fact that the deceased and the helper were in front of the vehicle. In the process the deceased and the helper of the water plant got crushed between the lorry and tractor and received grievous injuries. Immediately 101 and 108 ambulances were called and both of them were shifted to Government General Hospital, Chirala. The deceased died on 20.09.2008 while undergoing treatment. The Police of Venkatapalem P.S., had registered the accident as Cr.No.127 of 2008 under Section 337 IPC. Later, on account of the death of the deceased and the water plant helper, Section of law was altered to Section 304-A IPC. As the accident occurred in the course of employment, the application was filed seeking compensation under the Act.

6. It was pleaded that the deceased was aged 28 years and getting Rs.4,500/- per month as salary from O.P.No.1 and Rs.1,000/- as collection batta and therefore an application was filed seeking compensation of Rs.5,00,000/-.

7. O.P.No.1/employer filed a detailed counter supporting the claim and stated that the deceased was being paid Rs.3,500/- per month as salary and that the vehicle was insured with O.P.No.2-Insurance Company.

8. O.P.No.2-Insurance Company filed its counter contending that the deceased was not the cleaner in the lorry and the policy issued by O.P.No.2 did not cover the risk of cleaner or persons travelling in

the lorry and therefore the accident did not happen in the course of employment.

9. On the basis of the respective pleadings, the Commissioner framed the following issues for consideration:-

- 1) Whether the deceased was a workman under the 1st opposite party and died due to accident arising out of and in the course of his employment?*
- 2) If so, what is the age and wage of the deceased?*
- 3) To what relief the dependents of the deceased are entitled?*
- 4) To which extent the opposite parties are liable for payment of the compensation?*

10. The Claimant No.1 i.e. the wife of the deceased herself was examined as A.W.1 and got marked Exs.A.1 to A.5 i.e. Certified copy of F.I.R, Certified copy of Inquest Report, Attested copy of Post-mortem Report, Attested copy of M.V.I. Report and Attested copy of Report of A.S.I, Vetapalem respectively. The Claimant reiterated her claim averments and sought for compensation.

11. O.P.No.1 i.e. owner himself was examined as R.W.1 and got marked Ex.R.1 insurance policy. No oral or documentary evidence was let in by the O.P.No.2-Insurance Company.

12. The Commissioner taking into consideration the oral and documentary evidence and relying on a Judgment of this Court **United India Insurance Company vs. Sudini Indira and Others**¹ rejected the claim stating that the deceased had entered into an

¹ (2003) 3 ALD 753

altercation with a third party on the road and received injuries when the tractor moved forward and therefore the accident cannot be said to have any nexus to the employment of the deceased to award compensation. Accordingly, no compensation was awarded. Therefore, the present C.M.A is filed.

13. Heard Sri T. Prasanna Kumar, learned counsel for the Appellants and M/s K.N. Laxmi and M/s. A. Malathi, learned counsel appearing for the Respondents.

14. There is no dispute with regard to the employment, accident and the coverage of policy to the lorry and wages. The only issue for rejecting the claim was whether the accident had nexus with the employment of the deceased, as the accident happened when the deceased was arguing with the driver of the tractor in the middle of the road.

15. Having heard the respective contentions, the question of law that falls for consideration is *“whether the Claimants are entitled for compensation and whether the death of the deceased to be termed in the course of employment or not?”*

16. To start with, the Judgment relied upon by the Commissioner i.e. **United India Insurance Company vs. Sudini Indira and Others** is slightly different in the fact situation. In that case, there was an altercation between two drivers of the same employer after they had parked their vehicles and a case of a pre-existing dispute among them. In this case, the altercation is on account of rash and negligent driving caused by the driver of the tractor and the accident occurred while the driver drove the vehicle in an attempt to give way to the bus. The deceased himself was the complainant and on the

basis of his statement, F.I.R was registered against the driver of the tractor. The Section of law was altered subsequently in view of the death of the deceased.

17. The liability on the employer to pay compensation is prescribed under section 3(1) of the Act and the proviso thereto provides situations where the employer can be exempted from paying compensation. The Section 3(1) and proviso thereto are extracted below;

“Employer’s liability for compensation.—(1) If personal injury is caused to a employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable—

(a) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement, caused by an accident which is directly attributable to—

(i) the employee having been at the time thereof under the influence of drink or drugs, or

(ii) the willful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employee’s, or

(iii) the willful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employees of the Act.”

18. The paramount requirement and the most popular phrase under this Act to make the employer liable for compensation is that the accident should be ***out of and in the course of employment***. Once, the Claimants establish that the above requirement, the stage is then set to examine the defences available to the employer as prescribed in the proviso. In ***Abida Khatoon (Mst.,) vs. General Manager, Diesel Locomotive Works, Varanasi***², the Allahabad High Court while considering the above mentioned phrase referred to Judgment in ***Dover Navington Co.Ltd. Vs Grage***³ explaining the fine distinction between “out of employment” and “in the course of employment” at Paragraph 63 which in the opinion of this Court is precise and the Paragraph 63 reads as follows;

*“63. It is, however, not enough that the accident took place in the course of employment and it must be further established that it arose out of the employment. The words “ out of “ and “in the course of employment” are used conjunctively and not disjunctively. As observed by Lord Wright in ***Dover Navigation Co, Ltd. V. Grage, (1939) 4 All E. R. 558:****

What arises ‘in the course of the employment is to be distinguished from what arises ‘out of the employment’. The former words relate to time conditioned by reference to the man’s service, the latter to causality. Not every accident which occurs to a man during the time when he is on his employment, that is, directly or indirectly engaged on what he is employed to do gives a claim to compensation, unless it also arises out of the employment.”

² 1972 SCC OnLine All 119

³ (1939) 4 All ER 558

19. The Hon'ble Supreme Court in ***Mackinnon Mackenzie And Co., (P) Ltd., vs. Ibrahim Mahmmmed Issak***⁴ simplified the understanding of this phrase as requiring a casual relationship with the accident and the same reads as under:-

“To come within the Act the injury by accident must arise both out of and in the course. Of employment. The words “in the course of the employment” mean “in the course of the work which the workman is employed to do and which is incidental to it.” The words “arising out of employment” are understood to mean that “during the course. Of the employment, injury has resulted from some risk incidental to the duties of the service, which unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered.” In other words there must be a causal relationship between the accident and the employment. The expression “arising out of employment” is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of these factors the workman is brought within the scene of special danger the injury would be one which arises ‘out of employment’. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act.”

20. From the above, what all is required to make the employer liable to pay compensation is that the accident should have a casual connection to the employment and should be in the scope of employment of the employee. In this case, there can be no dispute

⁴ (1969)2 SCC 607

that the accident occurred in the course of employment as the cleaner/deceased was going in the lorry on the instructions of the employer. The grey area is whether the accident is out of employment. The facts leading to the accident in this case is the thoughtless driving of the driver of the tractor, which led to the driver of the lorry and the deceased to get down from the lorry and questioned the driver of the tractor regarding the manner of his driving. The act of getting down from the lorry is a natural reaction and more so by the deceased, as the driver had got down from the lorry too. It would be unrealistic for the cleaner/deceased to remain seated in the lorry while the driver gets down as his loyalty and job would be called into question. The visualisable understanding of facts does not show any imprudent act or unnecessary exposure to peril by the deceased considering realities of life rather than on utopian idea of human conduct.

21. The narrative further shows that the accident occurred on account of rash driving by the driver of the tractor in an attempt to give way to the APSRTC bus which was honking continuously. It should be noted that even assuming that there is some degree of unnecessary exposure to peril by the cleaner/deceased, the same is not a license to the driver of the tractor to run over him. The exposure to peril may not be of any consequence in cases where the injury/death occurred on account of the negligent act of a third party. In the facts of this case, there is *prima facie* evidence to establish that the accident occurred on account of the rash driving of the driver of the tractor, the exposure to peril in such a scenario is inconsequential.

22. Coming to defences available to the employer as enumerated in the proviso to section 3(1) of the Act, the restricted defences available to the employer to deny compensation are not available in this case as the deceased was not under influence of alcohol nor did he disobey any diktat of the employer or removed any safety equipment provided to him.

23. In the light of the above, this court holds that the accident occurred out of and in the course of employment and the Claimants are entitled for compensation. The employer as well as the Insurance Company are jointly and severally liable for the compensation amount.

24. Coming to the quantum of compensation, though the Claimants pleaded that the deceased was being paid Rs 4,500/- per month by O.P.No.1, there is no evidence to substantiate the same. The O.P.No.1 in his counter admitted that the deceased was being paid Rs.3,500/- per month and since the employer had admitted to the salary, the same should be adopted as held in **Mamta Devi and Others vs. Reliance General Insurance Company Limited and Another**⁵ by the Hon'ble Supreme Court. The Paragraphs 12 & 13 thereof are extracted below:

“12) Having regard to the object of the Act which envisages dispensation of social justice, we are of the considered view that the Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation fell in error in arriving at a conclusion that claimants’ income is to be construed at

⁵ 2023 SCC OnLine SC 728

Rs.3,900/- p.m. or the minimum wage to be computed should be at Rs.150/- per day in the absence of any proof of income. The written statement filed by the employer would be a complete answer to this, inasmuch as it is categorically admitted by the employer that deceased was drawing Rs.6,000/- per month as wages. The deceased was a truck driver and had four mouths to feed at the time of his demise in the year 2011. By no stretch of imagination, it can be construed that income which he was earning as claimed by his wife in her statement made on oath can be construed as excessive or not commensurate with the wages earned by a truck driver in the year 2011.

13) Thus, the irresistible conclusion which we have to draw is, the unchallenged statement of the wife of the deceased who had deposed that her husband was earning Rs.6,000/- per month deserves to be accepted as gospel truth. We see no reason for disbelieving her statement.”

25. Therefore, the amount of Rs.3,500/- as admitted by O.P.No.1 is taken into consideration for the purpose of quantification of compensation. The age of the deceased as per the post mortem report (Ex.A.3) is 28 years and adopting the same, the compensation payable to the Claimants as per the statutory formula is given below:

$$50/100 \times 3500 \times 211.79 = \text{Rs.}3,70,632/-.$$

26. **Interest:** The grant of interest as per Section 4-A (3) is from the date of compensation under the Act has “*become due*” and the controversy was when the compensation amount can be said to “*become due*” i.e. from the date of accident or from the date of adjudication. A four Judge Bench of the Hon’ble Supreme Court in ***Pratap Narain Singh Deo vs. Srinivas Sabata and Another***⁶ held that employer is responsible to pay compensation as soon as personal injury is caused to workman and the date of accident is the date on which amount is due and not date of adjudication by the Commissioner. A similar view was taken in ***Kerala State Electricity Board and Others vs. Valsala K. and Others***⁷ by a three Judge Bench of the Hon’ble Supreme Court. Without noticing the above two decisions, a contrary view was taken in ***National Insurance Company Ltd., vs. Mubasir Ahmed***⁸ and ***Oriental Insurance Co. Ltd., vs. Mohd. Nasir & Another***⁹ holding that compensation is due from the date of order of Commissioner or from the date of claim application. In ***Oriental Insurance Company Ltd., vs. Siby George***¹⁰, this conflict of decisions was noticed and it was held that later two decisions i.e. ***National Insurance Company Ltd., vs. Mubasir Ahmed*** and ***Oriental Insurance Co. Ltd., vs. Mohd. Nasir & Another*** (referred supra), do not lay down correct law and upheld the grant of interest @ 12% p.a. from the date of accident. A similar view was taken in ***North East Karnataka Road Transport***

⁶ AIR 1976 SC 222

⁷ 1999 (8) SCC 254

⁸ (2007) 2 SCC 349

⁹ 2009 (6) SCC 280

¹⁰ (2012) 12 SCC 540

orporation vs. Sujatha¹¹ (Paragraph 30) and in **K. Sivaraman and Others vs. P. Sathishkumar and Another**¹² (Paragraph 36).

27. Therefore, in this case also compensation amount of Rs.3,70,632/- shall carry interest @ 12% p.a. from the date of accident i.e. 17.09.2008.

28. The amount shall be deposited by the Insurance Company within 30 days from today and in default, penalty as provided under Section 4-A(3)(b) shall be imposed.

29. C.M.A is allowed as indicated above. There shall be no order as to costs. As a sequel, pending applications, if any, shall stand closed.

30. As there is long delay of 17 years from the date of accident and considering the uncertain addresses of claimants, the State Legal Services Authority shall coordinate with the concerned departments and inform the claimants about the outcome of Appeal and further ensure that the compensation is paid to the claimants directly into their Aadhar linked Bank Account.

31. The Registry is directed to mark a copy of this order to the State Legal Services Authority.

NYAPATHY VIJAY, J

Date: 07.03.2025

Note: L.R copy be marked

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¹¹ (2019) 11 SCC 514

¹² 2020 (4) SCC 594

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL MISCELLANEOUS APPEAL NO.1167 of 2011

Date: 07.03.2025

Note: L.R copy be marked

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