

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.179 of 2004

JUDGMENT:

This appeal is preferred by the New India Assurance Company challenging order dated 28.08.2001 in W.C.No.31 of 1998 on the file of the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour-II, Guntur.

2. Brief facts leading to this appeal are as follows:

Respondent Nos.1 and 2 filed application before Commissioner for Workmen's compensation i.e., Assistant Commissioner of Labour-II, Guntur contending that on 09.01.1998 the deceased during course of his employment as driver started from Sattenapalli to go to Tirupati and on the way received multiple injuries and he was admitted in hospital, where he was declared died due to injuries and the claimants being parents claimed compensation of Rs.2 lakhs and the Assistant commissioner of Labour-II, Guntur on a consideration of contentions and rival contentions of both parties and also oral and documentary evidence adduced on behalf of both parties granted Rs.1,86,335/- as compensation and ordered that appellant herein and respondent Nos. 3 and 4 herein are jointly and severally liable to pay the compensation.

3. Now the grievance of the insurance company is that the lower authority failed to notice that the insured vehicle was transferred in favour of 4th respondent herein w.e.f. 07.11.1997 i.e., long prior to the accident, therefore there is no liability on the

part of insurance company, since the deceased is not a worker under 3rd respondent herein as on the date of accident. He further contended that the lower authority without noticing this aspect made the insurance company also jointly and severally liable along with 3rd respondent though there is no relationship of employee and employer between the deceased and 3rd respondent as on 09.01.1998.

4. Advocate for claimant submitted that the lower authority has rightly granted compensation and that there are no grounds to interfere.

5. Now the point that would arise for my consideration:

Whether the order of the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour-II, Guntur is legal, proper and correct?

POINT:

6. As already referred above respondent Nos.1 and 2 as parents of the deceased approached Commissioner for Workmen's Compensation i.e., the Assistant Commissioner of Labour-II Guntur contending that deceased was employed under 3rd respondent herein on a monthly salary of Rs.1800/- per month and that he died during the course of employment.

7. On behalf of claimants, two witnesses are examined, first witness is one of the claimants and second witness is a private financier. On behalf of insurance company one witness is examined. From his evidence, it is clear that Ex.B1 policy is issued by them and the vehicle was transferred from 3rd

respondent herein to 4th respondent on 07.11.1997 and therefore as on the date of accident i.e., 09.01.1998 the deceased was not working under 3rd respondent herein. He further deposed that there is no relationship of employee and employer as on the date of accident and the insurance company is not liable to pay any compensation. This fact was recorded by the lower authority but as the policy is in force without noticing that there is no employee and employer relationship between policy holder and the deceased, the lower authority made the insurance company also liable along with 3rd respondent herein. In fact as rightly pointed out by advocate for insurance company the vehicle was transferred in the name of 4th respondent herein long prior to the date of accident. When the pleading of claimant is that deceased was employed by 3rd respondent herein, the finding of the appellate authority that deceased was employed by 4th respondent herein as on the date of accident is absolutely incorrect and liable to be set aside. In my view, the lower authority has committed error in appreciating the evidence on record particularly with regard to employee and employer relationship and wrongly fastened liability on the insurance company also.

8. From the submissions of both sides, it appears that the claimants have already withdrawn 50% of the compensation amount and now it is difficult for the insurance company to proceed against them. However, the insurance company is at liberty to claim back the said withdrawn 50% of the amount from the owner i.e., 3rd respondent herein and appellant is entitled to get back the remaining 50% amount lying in the Court to the credit of W.C. i.e., the Assistant Commissioner of Labour-II, Guntur.

Therefore, the award passed against appellant herein, who is opposite party No.2 in W.C.No.31 of 1998 is hereby set aside, while confirming the award against remaining respondents.

9. Accordingly, this Civil Miscellaneous Appeal is allowed.

No costs. Miscellaneous petitions, if any pending, in this appeal shall stand closed.

S. RAVI KUMAR, J

Date: 16.02.2015

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