

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.2245 of 2004

JUDGMENT:

This appeal is preferred by Insurance Company against order dated 08.08.2003 in W.C.No.19 of 2003 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Anantapur, whereunder, he granted compensation of Rs.2,21,814/- as against the claim of Rs.4,43,000/-.

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

Respondent Nos.1 to 3 herein filed application before the Assistant Commissioner of Labour, Anantapur, who is Commissioner for Workmen's compensation contending that deceased Y.Md.Vali was working as a cleaner on lorry belonging to 4th respondent and said lorry met with an accident, as a result, Y.Md.Vali died on the spot and that deceased was about 22 years and was earning Rs.3,000/- per month as cleaner and claimants are entitled for compensation of Rs.4,43,000/-. On these allegations, lower Authority conducted enquiry and on a overall consideration of oral and documentary evidence, granted Rs.2,21,814/-. Aggrieved by the same, Insurance Company preferred the appeal.

3. The main contention of appellant is that an application was filed with a delay of 604 days and the same was allowed without any notice it. It is further contended that as per docket proceedings, on 08.08.2003, lower authority reserved the matter for orders, but on 18.08.2003 on the petition filed by appellant

herein, case was reopened and posted to 25.08.2003 and subsequently RW.1 was examined on behalf of the appellant on 26.08.2003 and finally the matter was reserved for orders on 15.09.2003. But the lower Authority did not refer to reopen of the case and examination of RW.1, in the order dated 08.08.2003, which is contrary to the docket proceedings.

4. It is further submitted that cleaner is no other than son of the owner of vehicle. When this objection was taken, lower Authority, without considering the evidence of RW.1, passed the impugned order and, therefore, the same is liable to be set aside.

5. Otherside has not submitted any argument.

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

Whether the order of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ananthapur, is legal, proper and correct?

POINT:

7. The claimants i.e., respondents 1 to 3 herein contended that deceased Y.Md.Vali was under employment of 4th respondent herein as cleaner on lorry bearing No.AAA 7657 and that he died in an accident during the course of employment. The main grievance of appellant is that the deceased Y.Md.Vali was son of 4th respondent herein, who is owner of vehicle, and on its behalf RW.1 was also examined but lower authority without looking into said evidence, passed impugned order, therefore, the order of the lower authority is liable to be set aside.

8. I have perused original record and docket proceedings of the lower authority. As rightly pointed out by advocate for

appellant, the case was reopened on 18.08.2003 on the petition filed by appellant herein and thereafter RW.1 was examined on behalf of appellant on 26.08.2003 and finally on 15.09.2003, after concluding arguments case was reserved for orders, but ignoring these proceedings, the lower authority passed orders with date as 08.08.2003 without reflecting to subsequent proceedings. As rightly pointed out by advocate for appellant, the evidence of RW.1 is not at all referred and considered by lower Authority. So, apparently on the face of it, the order of the lower Authority is not in accordance with law. Further, when the matter is reopened on the request of appellant and witness was examined, it is incumbent on the lower Authority to consider the same with reference to claim of claimants/ respondents 1 to 3 herein. On a perusal of the record, I am of the considered view that the lower authority committed procedural irregularity and it is a fit case where the impugned order is to be set aside and to remit the case back to lower Authority with a direction to dispose of the case afresh, after considering the entire material on record within stipulated time.

9. Therefore, appeal is allowed by setting aside impugned order dated 08.08.2003 and case is remitted back to lower Authority with a direction to dispose of the case afresh by giving opportunity to both sides to submit their arguments and consider the material on record and to decide the case within six months from the date of receipt of copy of this order.

10. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date: 04.03.2015

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THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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