

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A.No.230 of 2009

JUDGMENT:-

This appeal is preferred questioning order dated 16.04.2007 passed in W.C.No.54 of 2003 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Anantapur.

2. Respondents 1 to 3 herein submitted an application to the Commissioner for Workmen's Compensation contending that deceased Kesavaiah was employed as agricultural coolie on tractor-trailer belonging to 4th respondent herein and that on 20.02.1999, deceased Kesavaiah, along with four other persons, were engaged as coolies to carry iron water tank in trailer to distribute water to pilgrims in Daduluru Parusa. It is contended that due to rash and negligent driving of driver of tractor, deceased sustained head injury and died and that they are entitled for compensation of Rs.4,00,000/-.

3. Insurance company resisted the claim mainly on the ground that deceased Kesavaiah is not employee under 4th respondent herein and not an agricultural coolie, but he is Sarpanch of the village. On these contentions, Commissioner for Workmen's Compensation conducted enquiry during which, two witnesses were examined and five documents are marked on behalf of claimants and one witness was examined and one document was marked on behalf of insurance company. On a overall consideration of oral and documentary evidence, lower authority has recorded a finding that deceased was an agricultural coolie on tractor-trailer bearing No.AP 02 T 8812 and 8813 belonging to 4th respondent herein and that he died during the course of employment on 21.02.1999. Questioning the same, insurance company preferred this appeal.

4. Heard both sides.

5. Advocate for appellant submitted that from the evidence of RW.1, it is clear that deceased is only a Sarpanch of the village and there is no employee and employer relationship between the deceased and 4th respondent herein and the lower authority has not properly appreciated the evidence of RW.1. He further submitted that there is collusion between the owner of tractor and the family members of deceased, and the lower authority wrongly granted compensation and the same is liable to be set aside.

6. On the other hand, advocate for claimant submitted that insurance company has not produced any evidence to show that deceased was a Sarpanch of the village, on the other hand, evidence of AW.2 would clinchingly show that deceased was working as agricultural coolie under 4th respondent herein and the lower authority has rightly granted compensation and that no substantial question of law is involved in this appeal.

7. Now the point that would arise for my consideration in this appeal is:

Whether the order dated 16.04.2007 passed in W.C.No.54 of 2003 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Anantapur, is legal, proper and correct?

POINT:-

8. There is no dispute with regard to the death of deceased Kesavaiah in the accident that took place on 21.02.1999. It is also not in dispute that there is valid insurance policy in force for the vehicle as on the date of accident. As seen from the record, it is the specific case of insurance company that deceased was Sarpanch of the village. Insurance company, except examining RW.1, has not

produced any material to show that deceased was Sarpanch. Even RW.1 admitted in his cross-examination that they have not produced any official evidence to show that deceased Kesavaiah was Sarpanch of the village and not an agricultural coolie. As rightly pointed out by advocate for claimant, if really the deceased was Sarpanch of the village, insurance company ought to have produced official records. Non production of any official evidence, sole interesting testimony of RW.1 cannot be accepted. Further, as seen from the record, the dispute is on factual aspects and there is no question of law involved in this appeal, leave alone substantial question of law. The lower authority, on a consideration of evidence of A.Ws.1 and 2 and documents in Exs.A.1 to A.5, recorded a finding that the deceased was an agricultural coolie and not Sarpanch and that he was employed under 4th respondent herein as on the date of accident and that he died during course of his employment. Findings of lower authority are based on material evidence and I do not find any grounds to interfere with the same.

9. For these reasons, it is held that there are no grounds to interfere with the findings recorded by lower authority and that the appeal is *de void* of merit and is liable to be dismissed. Accordingly, the appeal is dismissed. No costs. Miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

S. RAVI KUMAR, J

11th August, 2016
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