

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.203 OF 2008

Dated 15-2-2016

Between:

United India Insurance Company Limited, represented by
its Regional Manager, Basheerbagh, Hyderabad.

..Appellant.

And:

B.Sreekanth and another.

..Respondents.

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C.M.A.No.203 OF 2008

JUDGMENT:

This appeal is preferred challenging order dated 11-12-2006 in W.C.No.11 of 2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Hyderabad.

First respondent herein filed application before Commissioner for Workmen's Compensation contending that he was a workman employed by the second respondent herein as driver on a Mini Lorry bearing No.AP 02V 3178 on wages of Rs.3,000/- per month and that on 19-8-1999, while he was on duty as driver on the said Mini Lorry, he sustained injuries due to the accident caused to the vehicle and on his report, police registered crime No.279 of 1999 and that he is entitled for a sum of Rs.1,50,000/- as compensation.

Second respondent herein did not appear before the lower authority and the appellant herein opposed the claim of the first respondent herein and the lower authority on a consideration of oral and documentary evidence of both parties held that first respondent herein is entitled for compensation of Rs.1,53,452/- and aggrieved by the same, Insurance Company preferred the present appeal.

Heard arguments.

Advocate for appellant submitted that there is no relationship of employee and employer between the first respondent herein and second respondent but the lower authority without any material awarded compensation on the ground that first respondent herein is employee of second respondent herein. He further submitted that in the Charge sheet, police after due investigation found that the first respondent herein himself is owner of the vehicle involved in the accident but the lower authority ignoring the said aspect treated first respondent herein as employee of second respondent and granted compensation. It is further submitted that lower authority in stead of rejecting claim of first respondent, granted compensation and the same is erroneous. It is further submitted that the persons shown as owners in the claim petition even as per the own documents of the claim became owners of the vehicle long after accident and as on the date of accident, one Lingojirao was owner of the vehicle and therefore, the claim of the first respondent is not tenable. He further submitted that the claim do not fall under the definition of Section 2(N) of the Workmen's Compensation Act as claimant was not employee on the date of accident and the award granted by the lower authority is liable to be set side.

On the other hand, advocate for claimant submitted that the objections now raised on behalf of Insurance Company are not at all pleaded before the lower authority and no witness is examined on behalf of Insurance Company and without plea and evidence, it is not open to the Insurance Company to raise such objections in C.M.A. He further submitted that there is not even a plea in the counter that the claimant is owner of the accident vehicle and it is raised for the first time which cannot be entertained. He further submitted that the documents produced on behalf of claimant have clinchingly established that the claimant was employee as on the

date of accident and the objections raised by the Insurance Company are not sustainable.

Now the point that would arise for my consideration in this appeal is whether the order of Tribunal is legal, correct and proper?

POINT:

I have perused the entire record including order dated 11-12-2006. Insurance policy is marked as Ex.B.1 on behalf of Insurance Company and as Ex.A.8 on behalf of claimant. In the Insurance policy, the vehicle number was referred as KA O5 9293 and owner's name as Lingoji Rao. As per Ex.A.7, vehicle bearing No.AP 02V 3178 was originally in the name of D. Narasimha from 8-6-1994 to 4-6-1999 and G.Pratap Reddy from 4-6-1999 to 20-9-2000 and Hameed Bin Hussain from 20-9-2000 to 6-8-2002 and G.Niranjan from 6-8-2002 onwards. This Ex.A.7 was issued on 26-6-2004. One of the objection raised on behalf of appellant is that no person connected with this document is examined and it is only marked through claimant and the appellant has no opportunity to know correctness of these entries, particularly, when vehicle number in the policy reflects as KA O5 9293 and the policy was issued for the period from 11-4-1999 to 10-4-2000 but this Ex.A.7 letter refers to vehicle bearing vehicle bearing No.AP 02V 3178 even from 1994 onwards.

From a perusal of material, it is clear that Insurance Policy is issued for the vehicle bearing No. KA O5 9293 and the accident was to vehicle bearing No.AP 02V 3178. According to claimant, these two vehicles are one and the same and Karnataka registration was re-registered in A.P. and on re-registration, vehicle bearing No.AP 02V 3178 number was given but there is no evidence on record to show actually when this re-registration took place and unless that is established, it is

difficult to connect this policy to vehicle bearing No.AP 02V 3178.

Both advocate for appellant and advocate for claimant represented that unless opportunity is given to both parties to clarify these discrepancies with evidence, it is difficult to decide the matter with such discrepancies. I do find some force in the submissions of both sides and considering the material on record, I feel that it is a fit case to remit back the matter to Commissioner for Workmen's Compensation for fresh consideration and to decide the matter in accordance with law by setting side the order dated 11-12-2006.

For these reasons, the impugned order dated 11-12-2006 is set aside and the matter is remitted back to lower authority with a direction to give opportunity to both parties to adduce evidence if any and to decide the matter afresh clarifying the discrepancies both with regard to vehicle policy and relationship of employee and employer.

Since the order is set aside, Insurance Company is at liberty to withdraw the deposited amount. Lower authority shall fix the date and issue notice to both parties for their appearance and thereafter, decide the matter in accordance with law.

Appeal is accordingly disposed of. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 15-2-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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