

**THE HON'BLE SRI JUSTICE S. RAVI KUMAR**

**CMA No.950 of 2008**

**Date:13.04.2016**

**Between:**

The Divisional Manager,  
National Insurance company Ltd.,  
Subash Road, Anantapur.

... Appellant.

**AND**

Perugu Subbarayudu and others.

...Respondents.

**The Court made the following :**

**THE HON'BLE SRI JUSTICE S. RAVI KUMAR**

**CMA No.950 of 2008**

**ORDER:**

This appeal is preferred against order dated 08-10-2007 in W.C.No.8/2005 on the file of Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour, Kadapa.

2. Respondents 1 & 2 herein preferred claim before Commissioner for Workmen's Compensation contending that the deceased-Perugu Ramaesh was working as a Cleaner on lorry bearing No.AP-04-U-4424 belonging to third respondent herein and that due to rash and negligent driving of the driver of the lorry, it dashed against a stationed lorry, as a result, Ramesh-Cleaner died on the spot and that he was earning Rs.3,000/- as salary and batta and entitled for compensation of Rs.5,00,000/-. Insurance Company opposed the claim and contended that the claimants have to prove that the deceased was under the

employment of the owner of the lorry at the time of the accident and further contended that the policy does not cover the risk of the cleaner and therefore, they are not liable to pay any compensation. On these contentions, the lower authority has conducted enquiry during which one witness each is examined on behalf of the claimants and also on behalf of the insurance company and on a consideration of the same, granted compensation of Rs.2,83,243/- by taking the wages of the deceased as Rs.2,559/-. Aggrieved by which, Insurance Company preferred the present appeal.

3. Head both sides.

4. The main contention of Advocate for appellant-Insurance Company is that when a specific objection is taken that there is no relationship of employee and employer between the deceased and the third respondent herein and that the policy has not covered the risk of cleaner, no specific issue is framed by the lower authority and no finding was given on that aspect and therefore, the matter has to be remitted back to the lower authority to give opportunity to both parties to prove the said contention.

5. Advocate for respondents-claimants submitted that there is material on record to show that deceased was a cleaner working under third respondent and matter may be remitted back by fixing time as it is a old claim of the year 2005 relating to accident of 2004.

6. Considering the submissions of both sides and on a perusal of the material on record, I am of the view that it is a fit case to remit back the matter to the lower authority to decide the relationship of employee and employer and coverage of risk under the insurance policy by giving opportunity to both parties to lead evidence if any and decide the matter in accordance with law.

7. Since it is a old case, the lower authority shall dispose of the same as expeditiously as possible, preferably within four months from the date of receipt of the order. Insurance Company is permitted to take back the

money deposited at the time of filing of the appeal.

8. Civil Miscellaneous Appeal is disposed of accordingly. No costs.

9. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of.

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***JUSTICE S. RAVI KUMAR***

**Date:13.04.2016**

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