

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1071 of 2008

JUDGMENT:

This appeal is preferred questioning order dated 15.03.2007 in W.C.No.23 of 2005 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nellore.

2. Respondents No.1 and 2 herein submitted application to the Commissioner for Workmen's Compensation (for short "lower authority") contending that they are parents of deceased-driver Shaik Aziaz and that on 13.01.2005 while deceased was on duty on lorry bearing No.AP 26U 6589 proceeding from Belgam to Nellore, due to heart pain he was found dead in the lorry near Tadipatri of Ananthapur District and as their son died during course of his employment they are entitled for compensation of Rs.3,50,000/-. This claim was resisted by Insurance company and the lower authority on a consideration of oral and documentary evidence on record, granted compensation of Rs.3,25,066/-. Questioning the same, Insurance Company preferred the present appeal.

3. Heard arguments.

4. Advocate for appellant contended that order of lower authority is contrary to law, weight of evidence and probabilities of the case. It is further contended that there is no liability on the insurance company to pay any compensation, as it is collusion between claimant and owner. It is further contended that as per postmortem certificate, the death of deceased was a natural death

and therefore insurance company is not liable.

5. Advocate for respondents contended that the deceased died during course of his employment and to attract the provisions of Workmen's compensation Act, it is suffice to prove that the deceased was a worker and was under the course of employment at the time of incident and these two aspects are duly proved by examining the cleaner of lorry and there is no rebuttal evidence on behalf of insurance company, therefore objection of insurance company is not tenable. He further submitted that lower authority has rightly granted compensation and there are no grounds to interfere with the order of lower authority.

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

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

POINT:

6. There is no dispute with regard to relationship of employee and employer between the deceased and third respondent herein. From the evidence, it is clear that on 25.09.2006 while lorry was coming from Nellore and proceeding towards Belgam with a load of Super Phosphate near Gooty the driver complained some pain in the heart and after reaching Tadipatri the driver took some tablets and slept in the lorry for sometime and within half an hour, he was found dead and the postmortem certificate would disclose that the death was due to heart ailment.

7. As rightly pointed out by advocate for claimants to claim compensation under the Workmen's Compensation Act the

relationship of employee and employer has to be established and that the death must be during course of his employment. These two aspects are clearly proved through the evidence of AWs.1 and 2, particularly, AW.2, who was cleaner also travelled in the same lorry along with deceased, who clearly deposed that deceased was on duty at the time of death. Lower authority considering some rulings of High Courts held that the heart attack was a personal injury for which employer is liable to pay compensation. When the death is during course of employment and when there is no dispute with regard to relationship of employee and employer between the deceased and third respondent herein, objection of insurance company is not at all tenable. Lower authority has rightly fixed liability on the insurance company also and granted compensation since the deceased died during course of employment and claimants being parents and dependants are entitled for compensation. I do not find any wrong in the order of lower authority nor there is any wrong appreciation of evidence in coming to the conclusion that the claimants are entitled for compensation.

8. For these reasons, I am of the view that appeal is devoid of merits and liable to be dismissed.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 01-04-2016.

gvl