

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1307 OF 2008

Dated 20th April, 2016

Between:

_____ The New India Assurance Company Limited,
represented by its Manager, N.A.D.X.Roads, Opp.Petrol
Bunk, Visakhapatnam.

_____..Appellant.

And:

_____Bandaru Pydithallemma and another.

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_____..Respondents.

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CIVIL MISCELLANEOUS APPEAL No.1307 OF 2008

JUDGMENT:

This appeal is preferred questioning order dated 10-3-2008 in W.C.No.48 of 2006 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle-1, Visakhapatnam.

First respondent herein submitted application to Commissioner for Workmen's Compensation contending that deceased Bandaru Ramarao was employee on road roller bearing No.A.P.31-L-7665 and drawing a salary of Rs.4,000/-per month under second respondent herein and on 16-5-2005, the deceased went to Andhra University area for formation of roads and after attending duty while he was returning by taking the road roller on a tractor tailer bearing No.AP 31 U 1567-AEP 1803 when the tractor reached at Darginagar, near Bagulawada, left side wheel was punctured and the deceased along with tractor driver tried to open the wheel with the help of Jockeys, but the disk of the wheel came out accidentally with force and disc plate hit the deceased on the right side of forehead, as a result, he became unconscious and he was shifted to K.G.Hospital,

and from there to Abhaya Hospital and there he died while undertaking treatment. It is contended that claimant is entitled for Rs.4,33,825/- as compensation.

Insurance Company resisted the claim and specifically contended that the deceased has no effective and valid driving licence for the road roller and that the applicant has to prove the relationship of employee and employer and that the deceased died during the course of employment. Insurance company further contended that there is no statutory liability on the Insurance Company to pay any compensation as the licence produced on behalf of claimant is not in accordance with M.V.Act required for road roller.

On these contentions, lower authority conducted enquiry and on a consideration of oral and documentary evidence of both parties, allowed the application and granted Rs.4,26,337/- as compensation. Aggrieved by which, Insurance Company preferred the present appeal.

Heard arguments.

Advocate for appellant submitted that lower authority is not correct in treating the deceased as driver of road roller when the deceased was not having any valid licence to drive the road roller. He further submitted that the lower authority grossly erred in relying on Ex.A.4 which clearly indicates that the licence possessed by deceased was only to drive L.M.V. non-transport, L.M.V. transport and HGV non-transport and that the deceased has no valid driving licence to drive a road roller. He further submitted that as per Section 10 (2) (1) of M.V.Act, to drive a road roller, one has to possess a driving licence issued in accordance with that Section but the deceased had no such licence therefore, the lower authority is not right in accepting the claim of the first respondent herein and that the appeal has to be allowed.

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

POINT:

As seen from the record, claimant herself is examined as A.W.1 who categorically deposed that her deceased husband was driver under the second respondent herein for the road roller and on the date of accident her husband was on duty as driver on road roller and as her husband died during course of employment, she is entitled for compensation. On behalf of Insurance company, one G.Srinivasarao, Administrative Officer in Insurance Company is examined as R.W.1 and he deposed that he came to know about the death of the deceased only on receiving notice from second respondent herein. He deposed that the claimant failed to establish the employee and employer relationship between the deceased and second respondent and deceased had no valid licence therefore, the Insurance Company is not liable.

As seen from the record, Insurance Company took a specific plea by way of additional counter with copy of driving licence by contending that deceased is authorized to drive HTV and LMV but not road roller which is a special class of vehicle for which separate licence is required. It is further contended that the deceased was not holding licence to drive the road roller. Through P.W.1, driving licence of deceased was marked as Ex.A.4 and she assertively stated that it is the licence of her husband to drive the road roller and she was cross-examined on behalf of Insurance Company and a specific suggestion was put to her that deceased was not holding valid driving licence to drive the road roller. But that suggestion was not substantiated with any evidence even R.W.1 the Administrative Officer of Insurance Company has not whispered anything in his evidence with regard to driving licence or the plea that was taken by way of additional counter in respect of driving licence. The entire evidence of R.W.1 is only in respect of relationship of employee and employer between first and second respondent herein. The lower authority has elaborately discussed entire evidence on record with reference to plea taken by parties and recorded finding that

Insurance Company failed to place material to show that separate licence is required to drive road roller as pleaded in the counter and that licence produced by the claimant which is marked as Ex.A.4 is not sufficient to drive road roller.

Insurance Company has not examined any one from R.T.A. Department to support their plea with regard to driving licence held by the deceased under Ex.A.4. A plea taken in the counter cannot be taken as evidence unless it is substantiated with convincing material evidence.

Here Insurance Company has not placed any material to show that the deceased has no valid licence to drive road roller and Ex.A.4 does not entitle the deceased to drive the road roller.

The lower authority considered the evidence of claimant and the driving licence Ex.A.4 and held that the deceased was having driving licence to drive heavy goods vehicle and light motor vehicles under M.V.Act and road roller must fall either under light motor vehicle or heavy goods vehicles, therefore, he has got valid driving licence as on the date of accident and negated the objection of the insurance company. The lower authority has relied on some decisions in support of this view and I do not find any wrong in the findings of the lower authority with regard to driving licence.

Here in the appeal, only objection is with regard to driving licence. The said objection is not tenable, the contention of Insurance Company with regard to compensation granted by lower authority cannot be sustained.

On a scrutiny of material on record, I am of the view that lower authority has rightly negated the objection and granted compensation and that there are no grounds to interfere with the findings of the lower authority.

For these reasons, appeal is dismissed. No costs.

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

JUSTICE S.RAVI
KUMAR

Dated 20th April, 2016.
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs