

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CMA No.176 of 2009

Date:26.02.2016

Between:

Oriental Insurance Company Limited
rep by its Branch Manager, Begumpet,
Hyderabad and another.

... Petitioners.

AND

Smt. Mudavath Chitti and others.

...Respondents.

The Court made the following :

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JUDGMENT:

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This appeal is preferred challenging order dated 15-04-2005 in W.C.No.108/2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad.

2. The appellant herein is third respondent in W.C. Respondents 1 to 4 herein are the legal representatives of deceased employee who filed application before Commissioner for Workmen's compensation claiming a sum of Rs.5,00,000/- as compensation for the death of Sri Mothilal contending that he was hale and healthy and earning a sum

of Rs.6,000/- per month. The claim of applicants was resisted both by the insured and insurer and the lower Tribunal conducted enquiry during which three witnesses are examined on behalf of claimants besides marking three documents and one witness is examined on behalf of insurance company. On a overall consideration of oral and documentary evidence, lower authority has not accepted the objections of the insurance company and granted Rs.2,65,824/- calculating the compensation taking the wages of the deceased at Rs.2,000/- per month and factor at 207.98. Questioning the said award, insurance company preferred the present appeal.

3. Heard both sides.

4. Advocate for appellants submitted that the deceased was not a coolie and he is only a sub-contractor and the same is admitted by A.W.2 the own witness of claimant, but the lower authority, without considering such important admission, treated the deceased as employee of second respondent in the claim petition, granted compensation and the same is erroneous. He further submitted that second respondent in the claim petition took a policy covering risk of 20 coolies on a total wages of Rs.3,60,000/- and for that only, he paid the premium and if the wages of this 20 coolies are calculated on that basis, it would come to Rs.1,500/- per coolie and the lower authority instead of taking Rs.1,500/- as wages erred in taking Rs.2,000/- for these two reasons, the award of the lower authority has to be set aside. He further submitted that as there was typographical error in calculating the compensation, the same was corrected by the lower authority by order dated 14-09-2005 and as per the fresh calculation, the compensation comes to Rs.2,07,980/- instead of Rs.2,65,824/-.

5. On the other hand, Advocate for claimants submitted that the very same objections were raised before the lower authority and the lower authority rightly discarded these objections by giving cogent

and convincing reasons and that the insurance company cannot reagitated the same. He submitted that the counter filed on behalf of the insured i.e., second respondent in the claim petition clearly indicates that the deceased was employed by him and he died during course of his employment and the objection with regard to relationship of employee and employer is not tenable. He submitted that the insurance company is relying on a stray sentence in the deposition of A.W.2 ignoring the other evidence of A.W.3 the other witness examined on behalf of claimants, who categorically stated about the relationship of employee and employer and the lower authority, considering the entire evidence on record, has rightly discarded the objection of the insurance company. He further submitted that even with regard to wages, the lower authority has taken into consideration the minimum wages prescribed under G.O.Ms.No.34, W.D., C.W. & L. (Lab-II), dated 24-2-1992. According to which, the wage of the deceased comes to Rs.2,556.25 P.S., but the same was restricted to Rs.2,000/- in view of the ceiling in the policy and therefore, the objection of the insurance company is not tenable. He further submitted that the total premium paid is for 20 coolies and if there are 20 deaths, then only the question of taking average salary of this 20 coolies would arise, but here only one cooli died therefore, the objection of the insurance company with regard to wages taken by the lower authority is not tenable and there are no grounds to interfere with the award of the lower authority.

6. The main grounds raised by the insurance company are the following:-

“i. Whether the burden is on the claimants to prove the employment of the deceased with M/s.Metal Fabs, the insured or on the Insurance Company?

ii. Whether the Commissioner could fasten liability on the Insurance Company over and above the extent it under took to indemnify?”

7. Now the point that would arise for my consideration in this appeal is whether above two grounds are tenable or not?

8. **Point:-**First contention of the insurance company is that the burden is on the claimants to prove the employment of deceased with M/s. Metal Fabs, the insured of the insurance company. As seen from the record, the second respondent in W.C i.e., M/s.Metal Fabs categorically pleaded in it's counter that the deceased was employed by it to execute the work of the first opposite party in the claim petition and that employee slipped and fell from a height of 70 to 80 feet and died at the hospital. This pleading is supported by evidence of A.W.3 who is a co-worker also engaged by second opposite party in the claim petition and by considering the evidence of A.W.3 with reference to the pleadings, the lower authority has not accepted the objection of the insurance company. On a security of the evidence, I do not find any wrong in the approach of the lower authority either in assessing the evidence on record or in discarding the objection of the insurance company with regard to employer & employee relationship. Added to this, the first claimant examined as A.W.1 also deposed that her husband was working under second opposite party on the date of incident and died during course of his employment. Therefore, the cumulative effect of the evidence of A.W.1 & A.W.3 which is supported and corroborated with the pleading of the second opposite party, it is established that the deceased was worker of M/s. Metal Fabs and he died during course of his employment, therefore, the first ground urged on behalf of the appellant is not tenable and the same is negatived.

9. The next contention of the insurance company is that the commissioner fastened liability on the insurance company over and above the extent, which it undertook to indemnify.

This objection was also raised before the lower authority and the

Commissioner for Workmen's Compensation dealt this aspect in Para Nos.40 & 41 of it's order and disbelieved the objection on the ground that minimum wages as prescribed in G.O.Ms.No.34, dated 24-2-1992 have to be taken, even while taking that minimum wages, the lower authority has restricted the wages to Rs.2,000/- because of the impediment in the policy as the outer limit was Rs.2,000/- as per contract. As rightly pointed out by Advocate for claimants, if all the 20 workers died and claims are made on behalf of all the 20 workers, the contention of the insurance company may be correct to take the average estimated wages of each worker, but here though premium is paid for 20 workers, only one worker is involved in the accident and the minimum wages contemplated for a skilled worker were taken by the lower authority for the purpose of calculating compensation. So this objection of the insurance company with regard to wages and the liability to indemnify is not tenable and the trial Court rightly negated the objection of the insurance company.

10. On a over all scrutiny of the entire material on record, I am of the considered view that trial Court has not committed any error in granting compensation and the original amount as calculated in the order dated 15-04-2005 is rightly corrected through order dated 14-09-2005 because of the typographical mistake occurred in calculation. Therefore, the award granted by the lower authority for Rs.2,07,980/- is confirmed and the appeal is dismissed as devoid of merits. No costs.

11. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:26.02.2016

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