

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.190 of 2009

Date:21.04.2016

Between:

The New India Assurance Company Limited
Rep by its Divisional Officer,
IV Floor, A1-Kareem Trade Centre,
Rajigunj, Secumnderabad.

...Appellant.

AND

Sri K. Krishna and another.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.190 of 2009

JUDGMENT:

This appeal is preferred questioning order dated 02-06-2003 in W.C.No.51/2002 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle-III, Hyderabad.

2. First respondent herein submitted application to the Commissioner for Workmen's Compensation contending that he was driver of auto bearing No.AP-13-U-5400 belonging to second respondent herein i.e., Sri Mahamood Ahmed on a salary of Rs.3,500/- per month besides batta of Rs.10/- and that on 14-06-2002, while he was proceeding on the said

auto from Hyderabad towards Hayathnagar, he lost control over the vehicle and dashed against a Bajaj Chetak Scooter bearing No.ATY-2221 and in that incident, he sustained grievous injuries and as he received injuries during the course of employment, he is entitled for compensation of Rs.3,00,000/-. Insurance Company opposed the claim and contended that claimant is not under the employment of second respondent herein on auto bearing No.AP-13-U-5400 and denied the relationship of employee and employer. It is further contended that the accident was due to the negligence of the claimant himself, therefore, the Insurance Company is not liable to pay any compensation. On these contentions, lower authority conducted enquiry during which, two witnesses were examined on behalf of claimant and two witnesses were examined on behalf of Insurance Company besides marking 18 documents on behalf of claimant and two documents on behalf of Insurance Company. On a over all consideration of oral and documentary evidence, lower authority has negatived the objection of Insurance Company and granted compensation of Rs.1,83,156/- under the Workmen's Compensation Act taking the salary of the injured at Rs.2,585-75 P.S. Aggrieved by the said order, Insurance Company preferred the present appeal.

3. Heard arguments.

4. The main contention of the Insurance Company is that there was no evidence to show that first respondent herein was employee under the second respondent herein and in spite of that, the lower authority has granted compensation under the Workmen's Compensation Act. It is submitted that second respondent herein was examined as a witness on behalf of the respondent-Insurance Company and he categorically deposed that he has not employed the claimant and that the auto bearing No.AP-13-U-5400 was sold to Mr. Mohd. Jibrail on 25-03-2002 and all the papers were handed over to the purchaser and he is nothing to do with the auto as on the date of the

accident i.e., on 14-06-2002. It is submitted that the lower authority erred in granting compensation without there being any proof of employee and employer relationship between first respondent and second respondent herein. It is also contended that lower authority was not correct in granting interest.

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

6. **Point:-** It is specific case of claimant i.e., first respondent herein that he was working as driver on auto bearing No.A.P.13-U-5400 belonging to second respondent herein. The claimant as A.W.1 deposed in his evidence reiterating his version as pleaded in the application. On behalf of Insurance Company, second respondent herein was examined as R.W.2 and he deposed that he sold away his auto bearing No.AP-13-U-5400 on 25-03-2002 to Mr.Mohd. Jibrail and he handed over all the papers to him and that he is nothing to do with the auto as on 14-06-2002. He further stated that he never employed the first respondent herein on 14-06-2002. Lower authority has scanned the evidence of this R.W.2 with reference to insurance policy, which is marked as Ex.D1 and photo copy of R.C papers relating to auto, which is marked as Ex.A12 and copy of the permit of the auto, which is marked as Ex.A13. Both in Exs.A12 & A13, owner's name is reflected as second respondent herein i.e., R.W.2,

so even by the date of recording evidence and marking the documents, 'C' book of auto is in the name of second respondent herein. But as seen from the policy, it is for the period from 27-05-2002 to 26-05-2003 and stands in the name of second respondent. If really the vehicle was sold away on 23-05-2002 as deposed by R.W.2, there is no point in taking policy in his name for the period from

27-05-2002 to 26-05-2003 by which date, he is not owner according to him. Considering the documents Exs.D1, A12 & A13, the lower authority has not accepted evidence of R.W.2 with regard to relationship of employee and employer between R1 & R2 herein. On a scrutiny of these

documents, I do not find any wrong in the order of the lower authority in discarding evidence of R.W.2 and by relying on documents-Ex.D1, A12 & A13. When the documents Ex.A12 & A13, particularly permit to ply the auto is still in the name of second respondent herein as on 20-12-2002 the day on which these documents are exhibited through the evidence of claimant.

If really, the vehicle was sold as contended by R.W.2 on 25-03-2002, there is no point in continuing the RC book and permit in his name even in December-2012 and obtaining policy for the period from 27-5-2002 to 26-05-2003.

7. For these reasons, I am of the view that the lower authority was right in discarding the evidence of R.W.2 and accepting the evidence of claimant with regard to relationship of employee and employer, therefore, the objection of the Insurance Company on this aspect is not tenable.

8. The other objection of the Insurance Company is that lower authority has granted interest on the compensation amount, but this objection cannot be accepted in view of decision of Hon'ble Supreme Court in **SABERABIBI YAKUBBHAI SHAIKH AND OTHERS vs.**

NATIONAL INSURANCE COMPANY LIMITED AND OTHERS^[1]

according to which interest has to be granted from the date of accident till the date of deposit.

9. Accordingly, appeal is dismissed and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

No costs.

JUSTICE S. RAVI KUMAR

Date:21.04.2016

mrh

^[1] (2014)2 SCC 298