

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1447 of 2008

JUDGMENT:

This appeal is preferred questioning order dated 15.05.2008 in W.C.No.196 of 2005 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Kadapa, (for short, 'lower Authority').

2. First respondent herein filed application before Commissioner for Workmen's Compensation contending that he was an employee under the 2nd respondent as a cleaner on lorry bearing No.AP 04 T 9919, that on 08.06.2005 while he was working as cleaner sustained injuries and that he is entitled for compensation. The claim is resisted by the Insurance Company and the lower Authority conducted enquiry, during which, besides the evidence of claimant, Exs.A.1 to A.22 are marked on behalf of claimant and no witnesses are examined and no documents are marked on behalf of Insurance Company and owner. On a consideration of oral and documentary evidence, the lower Authority granted compensation of Rs.3,27,324/- against the claim of Rs.6,00,000/- and aggrieved by the same, present appeal is preferred.

3. Heard both sides.

4. Advocate for appellant submitted that the lower Authority is not justified in giving a finding as to the

relationship of employee and employer between 1st and 2nd respondents herein without therebeing any convincing evidence. He further submitted that lower Authority is not justified in accepting the salary certificate without examining the author of the certificate and as there is no material to support the employee and employer relationship, the order of the lower Authority is liable to be set aside.

5. On the other hand, advocate for claimant supported the order of the lower Authority and submitted that claimant himself deposed his relationship as employee with the 2nd respondent herein and that evidence is not rebutted by the Insurance Company as no one is examined on behalf of Insurance Company. It is further submitted that the salary certificate issued by the employer i.e., 2nd respondent herein is also marked as Ex.A.22 and that the lower Authority has rightly accepted the evidence of AW.1 and documents Exs.A.1 to A.22 and that there are no grounds to interfere with the findings of the lower Authority.

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

Whether the order dated 15.05.2008 in W.C.No.196 of 2005 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Kadapa, is legal, proper and correct?

POINT :

7. As seen from the material, it is a specific case of the claimant that he was working as cleaner on lorry bearing No.AP 04 T 9919 belonging to 2nd respondent herein. Now the main objection of the Insurance Company is that there is no material atleast prima facie to prove the relationship of employee and employer between the 1st and 2nd respondents herein. The claimant himself is examined as AW.1 and he deposed in his evidence, supporting the version he stated in his claim petition. He deposed that on 07.06.2005 he proceeded to Rajampet as a cleaner on lorry bearing No.AP 04 T 9919 and met with an accident during the course of his employment. He deposed that he is under the employment of 2nd respondent herein and earning Rs.3,000/- per month as salary and Rs.100/- per day towards batta from the 2nd respondent herein. Though this witness has stated that he is employee under the 2nd respondent, except putting suggestions nothing could be elicited from him to doubt his testimony. Through him, salary certificate issued by the 2nd respondent herein is marked as Ex.A.22. Now the objection of the advocate for Insurance Company-appellant is, as the person who issued the salary certificate is not examined, the same cannot be taken into consideration. But, I am not in agreement with the submission of advocate for claimant since the salary

certificate is marked through the claimant and no objection was raised at the time of marking the said document. If it was marked subject to proof and relevancy, then the objection of the appellant may be considered to some extent. But when no objection was raised with regard to the genuineness of the salary certificate at the time of marking and no evidence is produced on behalf of the Insurance Company rebutting the testimony of AW.1 and document Ex.A.22, the entire argument of advocate for appellant with reference to the evidence of AW.1 and document Ex.A.22 cannot be accepted. With regard to the other aspects, viz., wages of the claimant and the calculation made by the lower Authority, there is no serious dispute and the only objection is with regard to relationship of employee and employer. The evidence of claimant and the document Ex.A.22 remained unchallenged, therefore, the lower Authority has rightly recorded a finding that the relationship of employee and employer is established through the evidence of AW.1 and Ex.A.22 and I do not find any wrong in the approach of the lower Authority in recording such a finding. On a scrutiny of the material, I do not find any wrong appreciation of evidence or incorrect findings for awarding compensation in favour of the claimant.

8. For these reasons, I am of the view that the appeal is devoid of merits and there are no grounds to interfere with the findings recorded by the lower Authority.

9. Accordingly, appeal is dismissed. No costs.
10. Miscellaneous petitions pending, if any, shall stand closed.

S. RAVI KUMAR, J

15th June 2016.

mar