

HON'BLE SRI JUSTICE S. RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.132 of
2009

JUDGMENT:

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This appeal is preferred questioning order dated 27.12.2008 in W.C.No.5 of 2008 on the file of Commissioner for Workmen's Compensation and Assistant commissioner of Labour, Ongole.

2. First respondent herein submitted application to the Commissioner for Workmen's Compensation (for short "lower authority") contending that deceased who was petitioner's husband went on duty on the instructions of second respondent herein on 26.10.2007 with load of tomato on lorry bearing No.AP 27/W 6389 and at about 5.00 a.m., the said lorry hit another stationed lorry on its back due to heavy fog, as a result, the deceased died on the spot. It is further contended that deceased was earning Rs.4,500/- per month as salary and Rs.1,000/- towards batta and that claimant is entitled for compensation of Rs.4,00,000/-. Insurance Company opposed the claim and contended that there is no relationship of employee and employer between the deceased and second respondent herein and that there is no liability for the insurance company to pay any compensation. On these allegations, lower authority conducted enquiry, during which, three witnesses are examined and 8 documents are marked on behalf of claimant, whereas, one witness is examined

and one (1) document is marked on behalf of insurance company and on a over all consideration of oral and documentary evidence, lower authority has not accepted objection of insurance company and granted compensation of Rs.4,19,840/- by taking the wages of deceased at Rs.2,000/- per month. Aggrieved by the order of lower authority, insurance company preferred the present appeal.

3. Heard both sides.

4. Advocate for appellant submitted lower authority failed to see that there was no relationship of employee and employer between deceased and second respondent herein and failed to notice that deceased was only a gratuitous passenger travelling in the lorry at the time of accident. He further submitted that lower authority did not take into consideration specific plea raised on behalf of appellant/insurance Company, and therefore, order of lower authority is liable to be set aside.

5. On the other hand advocate for first respondent/ claimant submitted that there is ample evidence on record to show that deceased was employee under second respondent herein and the evidence of AW.2 and AW.3 has remained un-rebutted and lower authority has rightly granted compensation by accepting un-rebutted evidence of AW.2 and AW.3, and that there are no grounds to interfere with the findings 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, Ongole is legal, proper and correct?

POINT:

7. There is no dispute that deceased Rammohana Reddy @ Ramudu died in an accident at about 5.00 a.m. on 26.10.2007. The only objection of insurance company is that deceased was not an employee under second respondent herein and he was only a gratuitous passenger. On the other hand, it is the contention of claimant that the deceased was travelling in the lorry as second driver being employee of second respondent herein and he died during course of his employment. On behalf of claimants, claimant herself is examined as AW.1 and driver of the lorry, who is also an eyewitness to the incident, is examined as AW.2 and the owner of lorry is examined as AW.3. The driver-AW.2 clearly deposed in his evidence that the deceased was second driver of lorry and that the lorry went to Vizag and from there to Chintamani of Karnataka State and from there to Nellore and from Nellore to Chirala, and on their return journey, while lorry was crossing Tettu junction, due to poor visibility, the lorry dashed against a stationed lorry, and as a result, the deceased died on the spot and that the driver escaped from the accident with minor injuries. He specifically stated that accident took place while deceased was on duty and

both deceased and himself were having valid driving licence. The owner of lorry, who is examined as AW.3 also deposed that deceased was employed by him and he was on duty as second driver on lorry bearing No.AP 27/W 6389 on the date of incident and he was paying Rs.5500/- towards wages. These two witnesses were cross-examined on behalf of insurance company. Except putting suggestions, nothing could be elicited from them to discredit their testimony, particularly, with regard to relationship between deceased and the second respondent herein. Though RW.1 was examined on behalf of the insurance company, there was nothing on record to rebut the statements of AWs.2 and 3 with regard to relationship of employee and employer between deceased and second respondent herein. Lower authority considering the evidence of AWs.2 and 3 has discarded objection of the insurance company, and I do not find any wrong in the approach of lower authority in accepting evidence of AWs.2 and 3.

8. On a scrutiny of the material, I am of the view that lower authority has rightly granted compensation by recording that deceased was employee under second respondent herein and died during course of his employment. I do not find any grounds to interfere with the findings of lower authority.

9. For these reasons, the appeal is devoid of merits and is liable to be dismissed.

10. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Miscellaneous Petitions, if any

pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 21-04-2016.
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