

HON'BLE SRI JUSTICE S. RAVI KUMAR

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C.M.A. No. 62 of 2009

-
DATE: 08.07.2016

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Between:

National Insurance Co. Ltd.

.. Appellant/
Opposite Party

No.2

and

Mosala Latchaiah

Respondents

and another

..

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JUDGMENT:-

This appeal is preferred questioning order dated 02.09.2006 in W.C.No. 83 of 2004 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda.

The 1st respondent herein submitted an application under Section 22 of Workmen's Compensation Act, 1923 for workmen compensation contending that the deceased was working as labourer under the 2nd respondent herein on his Tipper bearing No. AP16 X 2583 on monthly wages of Rs.3,000/- and that on 16.03.2004, under the instructions of her owner, the deceased – Mosala Ruthamma and others were proceeding in the Tipper from Chillakallu to Damera for loading purpose and when they reached near Jagjeevan Ramnagar on the outskirts of Chilukuru village, due to rash and negligent driving of the driver, the deceased fell down from the vehicle and received grievous injuries and died on the spot and that he is entitled to compensation of Rs.3,50,000/-. This was resisted by the Insurance Company on the ground that the deceased was only a passenger traveling in the vehicle and there is no relationship of employee and employer between the deceased and the 2nd respondent herein. On these contentions, the lower authority

conducted enquiry during which one witness was examined and four documents were marked on behalf of the claimant whereas no witness was examined but Ex.B1 was marked on behalf of the Insurance Company, and on overall consideration of the material on record, the lower authority granted a sum of Rs.2,30,197/- as compensation, aggrieved by which, the Insurance Company preferred the present appeal.

Heard the learned counsel for both the parties.

The learned counsel for the appellant submitted that the lower authority failed to see that the deceased was traveling in the Tipper at the time of accident and there is no employee and employer relationship between the deceased and the 2nd respondent herein. It is submitted that the Insurance Company was made liable without any proof of employee and employer relationship. Therefore, the order of the lower authority is contrary to law and liable to be set aside.

On the other hand, the learned counsel for the claimant submitted that except taking a plea, the Insurance Company has not produced any evidence to show that there was no employee and employer relationship between the deceased and the 2nd respondent herein. He further submitted that the claimant clearly deposed in his evidence that his wife was working as labourer under the 2nd respondent herein on monthly wages of Rs.3,000/- and that part of the evidence remained unchallenged. Therefore, the trial Court was right in granting compensation and there are no grounds to interfere with the order of the lower authority.

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

correct and proper?

POINT:- There is no dispute that the deceased – Ruthamma died on 16.03.2004 in the accident on Tipper bearing No.AP16 X 2583. There is also no dispute that the 2nd respondent is the owner of this Tipper and the policy was in force as on the date of the accident. To support his claim, the claimant himself is examined as PW1 who stated that the deceased – Ruthamma is his wife and that she died during the course of employment while working as labourer under the 2nd respondent herein. Through him, certified copy of the F.I.R., certified copy of inquest report, certified copy of postmortem report and certified copy of charge sheet are marked as Exs.A1 to A4 which supported the version of the claimant that the deceased – Ruthamma was under the employment of the 2nd respondent herein. To rebut this evidence, no witness was examined and the Insurance Company, except marking the policy – Ex.B1, has not produced any other evidence. As rightly pointed out by the learned counsel for the claimant, the plea taken by the Insurance Company is not at all sufficient and any amount of argument without there being any evidence is of no use. As seen from the record, the evidence of PW1 which is supported by Exs.A1 to A4 remained unchallenged and in the cross-examination, except the suggestion, nothing is elicited to doubt his testimony. The lower authority had considered these aspects and discarded the objections of the Insurance Company with regard to the employee and employer relationship thereby granted compensation.

I do not find any wrong in the order of the lower Tribunal nor there is any appreciation of evidence from the record. Mere

taking a plea is not sufficient and only if it is substantiated with evidence such plea can be examined. As the appellant failed to place any evidence to show that there is no employee and employer relationship between the deceased and the 2nd respondent herein, the objection of the Insurance Company is not tenable.

For these reasons, I am of the view that the appeal is devoid of merits and liable to be dismissed.

Accordingly, the appeal is dismissed. No order as to costs.

As a sequel to the dismissal of the appeal, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

J

S. RAVI KUMAR,

08.07.2016

bcj