THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.1167 of 2008

Date:08.06.2016

Between:

The Oriental Insurance Company Limited rep by its Senior Divisional Manager, Divisional Office IV, Capital Building, Khairatabad, Hyderabad.

...Appellant.

AND

M. Naraiah and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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JUDGMENT:

This appeal is preferred questioning order dated 22-03-2006 in W.C.No.35/2005 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-IV, Hyderabad.

2. First respondent herein submitted application to the Commissioner for Workmen's Compensation contending that he was driver-cum-cleaner on lorry bearing No.AP 21U 9099 belonging to

third respondent herein and on 5-7-2005, while he was on duty as second driver-cum-cleaner in the said lorry and proceeding from Bachupalli towards Gandimaisamma at about 3:30 P.M., one tipper lorry bearing No.AP 28U 2592 came in opposite direction in a rash and negligent manner and dashed against his lorry due to which, he sustained grievous injuries besides multiple fractures and he was shifted to nearby hospital and therefrom to Gandhi Hospital, Secunderabad, where he was declared dead. It is further contended that the deceased was getting monthly salary of Rs.4,500/- and that the claimants are entitled for compensation of Rs.4,50,000/-. The appellant herein resisted the claim of the claimants and contended that the deceased was not a driver on lorry bearing No.AP 21U 9099 and there is no employee and employer relationship between the deceased and third respondent herein. It is also contended that deceased was not possessing valid and effective driving license and as there is violation of policy conditions, Insurance Company is not liable to pay any compensation. On these contentions, lower authority conducted enquiry during which, one witness was examined and 11 documents were marked on behalf of the claimants and one witness was examined and two documents were marked on behalf of the Insurance Company and on a over all consideration of oral and documentary evidence, lower authority has not accepted the objection of the Insurance Company and granted Rs.2,72,048/- as compensation and a stamp fee of Rs.546/- & costs of Rs.500/- totaling to Rs.2,73,094/-. Aggrieved by the award passed by the Court below, Insurance Company preferred the present appeal.

3. Heard arguments.

4. Advocate for Insurance Company submitted that the Commissioner for Workmen's Compensation ignored the admitted factual position that the deceased was not having effective and valid

driving license as on the date of the accident. He further submitted that the Insurance Company is not liable to pay any compensation for violation of the policy conditions, but the lower authority, without considering the same, fixed liability on Insurance Company also. It is further submitted that there is no employee and employer relationship between the deceased and third respondent herein and the lower authority gave a contrary finding without considering the evidence of R.W.1.

5. On the other hand, Advocate for respondents 1 & 2 submitted that there are no grounds to interfere with the order of the lower authority and further submitted that R.W.1 clearly admitted in his evidence that the deceased died during course of his employment as driver-cum-cleaner and once the owner is liable to pay compensation, the Insurance Company cannot avoid it's liability. He submitted that the lower authority rightly discarded the objection of the Insurance Company and that there are no grounds to interfere.

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

7. **Point:**- There is no dispute that the deceased died on 05-07-2005 due to accident. Though it is contended that there is no employee and employer relationship between the deceased and third respondent, R.W.1 in his cross-examination made a categorical admission that deceased Krishnaiah died, while he was performing his duties as driver-cum-cleaner on lorry bearing No.AP 21U 9099. One of the contentions of the Insurance Company is that lower authority has not properly appreciated evidence of R.W.1, but when R.W.I made a categorical admission with regard to relationship of employee and employer and that the death was during course of employment, the contention of the Insurance Company with regard to

appreciation of evidence of R.W.1 cannot be accepted. It is the specific case of the claimants that deceased was cleaner-cum-driver and that he is the second driver and one Bala Raju was the main driver. According to claimants, due to the rash and negligent driving of opposite vehicle i.e., lorry bearing No.AP 28U 2592, the accident occurred and deceased sustained grievous injuries including multiple fractures, which resulted in his death. So it is not a case where the accident was due to the negligence of the deceased himself. When there is evidence on record would show that he was cleaner-cum-driver and second driver, the objection of the Insurance Company with regard to his competency cannot be accepted and the very same objection was raised before the lower authority and on a consideration of material on record, the lower authority recorded that Ex.A8 would show that the fitness certificate is renewed up to 17-03-2006 and the driving license show that deceased was having valid license to drive the vehicle and considering these aspects, lower authority discarded the objection of the Insurance Company. I do not find any wrong appreciation of evidence nor any illegality in the order of the lower authority.

8. For these reasons, I am of the view that there are no grounds to interfere with the findings recorded by the lower authority and the compensation fixed.

9. Therefore, appeal is dismissed and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed. No costs.

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JUSTICE S. RAVI KUMAR

Date:08.06.2016

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