

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A.No.No.85 of 2008

and

C.M.A.No.1193 of 2008

COMMON JUDGMENT:

These two appeals are preferred against the order dated 21.05.2007 passed in W.C.No.3 of 2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle – 2, Visakhapatnam.

2. CMA No.85 of 2008 is filed by the insurance company and CMA No.1193 of 2008 is filed by the owner. First respondent in CMA No.1193 of 2008, i.e., Pyla Srinu, is the claimant who approached Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle – 2, Visakhapatnam, contending that he sustained injuries in an accident that occurred during course of his employment on 09.01.2003, which resulted in 25% disability and claimed compensation.

3. Claim petition was enquired during which, claimant was examined as AW.1 and a co-worker was examined as AW.2, medical officer was examined as AW.3 and Panchayat Secretary was examined as AW.4 on behalf of claimant, besides marking Exs.A.1 to A.5. On behalf of appellant in CMA No.1193 of 2008, Managing Director of Tirumala Srinivasa Projects Private Limited was examined as RW.1 and an officer from insurance company was examined as RW.2 and no documents are marked on behalf of respondents. On a consideration of oral and documentary evidence, the lower authority has not accepted the plea of appellants herein and granted compensation of Rs.3,44,165/- and liability of insurance company was restricted to Rs.50,000/-. Aggrieved by the same, appellants preferred the present appeal.

4. Heard both sides.

5. Advocate for appellants submitted that Tirumala Srinivasa Projects Private Limited is different from M/s.Anjani Fly Ash and Brick Industry and policy is in the name of Tirumala Srinivasa Projects Private Limited, whereas, claimant was an employee of M/s.Anjani Fly Ash and Brick Industry and, therefore, order of lower authority directing the owner of Tirumala Srinivasa Projects Private Limited and its insurer to pay compensation is not maintainable. He further submitted that RW.1, in clear terms, deposed that Tirumala Srinivasa Projects Private Limited has nothing to do with M/s.Anjani Fly Ash and Brick Industry, but the lower authority, without properly appreciating evidence of RWs.1 and 2, accepted the version of claimant and that these two units are one and the same and, therefore, the order of lower authority is liable to be set aside.

6. On the other hand, advocate for claimant submitted that both these units are run by RW.1 and they are not separate entities and policy covers the risk of claimant and lower authority rightly granted compensation. He further submitted that appellants have not produced any documents to show that M/s.Anjani Fly Ash and Brick Industry is different from Tirumala Srinivasa Projects Private Limited and, therefore, there are no grounds to interfere with the orders of lower authority.

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

Whether the order dated 21.05.2007 in W.C.No.3 of 2004 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle – 2, Visakhapatnam, is legal, proper and correct.

8. The main contention of the appellant is that M/s.Anjani Fly Ash

and Brick Industry is different from Tirumala Srinivasa Projects Private Limited. Admittedly, policy is in the name of Tirumala Srinivasa Projects Private Limited. It is not in dispute that claimant sustained some disability during course of his employment on 09.01.2003. In the claim petition, claimant specifically stated that he was working as semi-skilled worker with M/s.Anjani Fly Ash and Brick Industry, represented by Tirumala Srinivasa Projects Private Limited. In his evidence, he reiterated the same and to support his claim, one of the co-workers (AW.2) was examined, who also deposed that both himself and injured are working in M/s.Anjani Fly Ash and Brick Industry, which is represented by Tirumala Srinivasa Projects Private Limited. Even in the documents, i.e., Exs.A.1, A.2 and A.5, the same was reflected. As against this, RW.1, in his cross-examination, stated that he do not know what is M/s.Anjani Fly Ash and Brick Industry and when he was confronted with certain photographs relating to M/s.Anjani fly ash and brick industry, on seeing them, he stated that he cannot say whether those buildings are of his industry or not, but he has not assertively denied the photographs. RW.2 also, in his cross-examination, stated that he do not know whether M/s.Anjani Fly Ash and Brick Industry is run by Tirumala Srinivasa Projects Private Limited. He also did not assertively stated that M/s.Anjani Fly Ash and Brick Industry is different from Tirumala Srinivasa Projects Private Limited. The evidence of A.Ws.1, 2 and 4 would clinchingly show that both these units are one and the same and belong to RW.1. The lower authority has considered the evidence on record and recorded a finding that both the appellants failed to produce any material to substantiate their plea that M/s.Anjani Fly Ash and Brick Industry is not represented by Tirumala Srinivasa Projects Private Limited. I do not find any wrong appreciation of evidence or any illegality in the order of lower authority in recording such a finding. Only objection of appellants is that M/s.Anjani Fly Ash and Brick Industry is different from Tirumala Srinivasa Projects Private Limited, which was not

established through convincing evidence.

9. For these reasons, I am of the view that lower authority has not committed any error in granting compensation and limiting liability of insurance company for Rs.50,000/- in view of the separate insurance policy, and that there are no grounds to interfere with the findings recorded by lower authority.

10. Therefore, I am of the view that both the appeals are *de void* of merit and are liable to be dismissed. Accordingly, both the appeals are dismissed. No costs. Miscellaneous petitions, if any, pending in both these appeals, shall stand closed.

S. RAVI KUMAR, J

08th August, 2016.
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