

HON'BLE SRI JUSTICE S. RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1165 of
2008

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JUDGMENT:

This appeal is preferred questioning order dated 29.11.2005 in W.C.No.23 of 2005 on the file of Commissioner for Workmen's Compensation and Assistant commissioner of Labour, Ongole.

2. Respondents No.1 and 2 herein submitted application to the Commissioner for Workmen's Compensation (for short "lower authority") contending that their son Tirumala Rao (hereinafter referred to as "the deceased") was employed as cleaner on lorry bearing No.AP-27U-8989 on a monthly wage of Rs.3,000/- and that he went on duty 7 days prior to the incident to Mysore and from there to Nandikotkur and there to Nandyal and from there the lorry left to Chennai with load of food grains and that the deceased died during course of his employment and that they are entitled for compensation of Rs.3,50,000/-. Insurance Company resisted the claim mainly on the ground that the driver allowed the cleaner i.e., deceased to drive the vehicle and that there is no liability for insurance company to pay any compensation. Insurance company also denied the wages claimed by deceased and on these contentions, lower authority conducted enquiry, during which, two witnesses are examined and 5 documents are marked on behalf of claimant and no 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 granted Rs.2,70,481/- by taking the wages of deceased at Rs.2429/-. Aggrieved by the order of lower authority, insurance company preferred the present appeal.

3. Heard both sides.

4. Advocate for appellant submitted that compensation awarded is excessive and baseless and the lower authority erred in fixing liability on the insurance company also. He submitted that the deceased/cleaner had no authority to drive the vehicle and as driver allowed the cleaner to drive the vehicle there is no liability on the part of insurance company to pay any compensation. He further submitted that the lower authority only on assumptions and presumptions granted compensation. It is further submitted that lower authority has completely erred in applying minimum wages to the deceased, therefore, order of the lower authority is liable to be set aside.

5. On the other hand advocate for claimants submitted that no substantial questions of law is involved in this appeal and all the grounds raised under the caption of substantial questions of law are on factual aspects. He further submitted that lower authority has rightly granted compensation and that there are no grounds to interfere.

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. According to claimants the deceased was employed as cleaner on lorry bearing No.AP-27U-8989 belonging to third respondent herein. To prove the relationship of employee and employer, claimants mainly relied on the evidence of AWs.1 and 2. AW.1 is one of the claimants, who deposed that deceased was employed as cleaner and that he came to know about the incident only through owner i.e., third respondent herein. Owner is examined as AW.2 and he deposed that deceased-Tirumala Rao was working as cleaner on his lorry AP-27U-8989 and that he met with an accident at about 4.00 a.m. on 08.05.2005. He deposed that driver of lorry informed about the incident and immediately he conveyed the same to the claimants and AW.1 was cross examined on behalf of insurance company but except putting suggestions nothing was elicited from him to discredit his testimony. So, from the evidence of AWs.1 and 2, it is clear that deceased-Tirumala Rao died during course of his employment and that respondents No.1 and 2 herein are the parents of deceased-Tirumala Rao. One of the contentions of insurance company is that lower authority gave a finding as to the relationship of employee and employer only on assumptions and presumptions without any acceptable evidence. But this objection is not tenable in view of the evidence of AWs.1 and 2, which remained

un-rebutted. Though owner is examined as witness on behalf of claimants supporting the plea of claimants with regard to employment, no witnesses are examined on behalf of insurance company to rebut the evidence of owner. Therefore, the contention of insurance company that lower authority decided the issue of employee and employer relationship on assumptions and presumptions is not correct and the findings of the lower authority are based on evidence but not on assumptions and presumptions.

8. The other objection of insurance company is that minimum wages were applied to the deceased-Tirumala Rao without putting any notice on insurance company. In the claim petition, it is contended that deceased was drawing Rs.3,000/- per month as cleaner and this version is deposed by AW.1 in his evidence. Though there was no rebuttal evidence disputing that aspect, lower authority has not taken that wages into consideration, as the owner has not submitted any records in proof of wages. Lower authority applied the minimum wages applicable to a cleaner and according to Minimum Wages Act, Rs.2429/- is the minimum wage payable to a cleaner. Now the objection of insurance company is that they were not put on notice while taking minimum wages, but the objection is not tenable because minimum wages are fixed by the Government under statute, and for following that, insurance company cannot complain.

9. As already referred above, except marking

insurance policy, no other material is produced on behalf of insurance company to support their plea. Though insurance company contended that there is violation of policy conditions the same is not substantiated with any material evidence. Lower authority has rightly discarded the objection raised by insurance company.

10. On a scrutiny of the material, I am of the view that lower authority has rightly appreciated the evidence on record and rightly applied minimum wages in calculating compensation and I do not find any grounds to interfere with the findings of lower authority.

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

12. 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: 25-04-2016.
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