## HON'BLE SRI JUSTICE S. RAVI KUMAR

## CIVIL MISCELLANEOUS APPEAL No.1077 of 2008

**JUDGMENT**:

This appeal is preferred questioning order dated 15.06.2006 in W.C.No.36 of 2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour Circle-II, Guntur.

2. First Respondent herein submitted application to the Commissioner for Workmen's Compensation (for short "lower authority") contending that he was driver on lorry bearing No.AP 7V 789 and that on 24.02.2004 at about 12 noon while he was proceeding from Narasaraopet to Vinukonda as driver of said lorry with a load of sand and when the lorry reached near Santhamaguluru, it met with accident, as it dashed against stationed lorry, due to which, claimant received fracture injuries to his right leg knee and fracture of left femur and other multiple injuries all over the body. He contended that the accident was occurred during course of employment and at that time he was drawing an amount of Rs.3,000/- per month as salary and due to the accident, he is unable to do work of driver and that he is entitled for compensation of Rs.2 lakhs. This claim was resisted by insurance company denying employment of claimant under second respondent herein and contended that insurance company has no liability to pay any compensation in view of violation of terms and conditions of policy. On these contentions, lower authority conducted enquiry, during which, two witnesses are examined and 10 documents are marked on behalf of claimants and one witness is examined and 2 documents are marked on behalf of insurance company and on a over all consideration of

oral and documentary evidence, lower authority granted compensation of Rs.1,21,034/- as against claim of Rs.2 lakhs. Aggrieved by the same, insurance company preferred the present appeal.

3. Respondents No.1 and 2 in spite of service of notice neither appeared in person nor through any advocate.

4. Heard advocate for petitioner.

5. It is submitted by insurance company that when the lower authority recorded finding that there was violation of policy conditions, it erred in granting compensation fastening liability on the insurance company also. It is further submitted that lower authority is wrong in taking wages of the claimant at Rs.3,700/- per month, though claimant himself stated that he was earning only Rs.3,000/- per month. He further submitted that lower authority erred in taking loss of earning capacity at 30% and for these reasons, order of lower authority is liable to be set aside.

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 Circle-II, Guntur is legal, proper and correct?***

**POINT:**

7. It is the contention of claimant that he was driver on lorry bearing No. AP-7V-789 and that he sustained injuries while on duty on 24.02.2004. The injured himself is examined as AW.1 and medical officer was examined as AW.2. Injured clearly deposed in his evidence that the manner in which, he sustained injuries and that the same are during course of his employment. In the cross-examination he assertively stated that he is working as driver on lorry bearing No.AP-7V-789, but he stated that he has not

produced any proof to show that he was drawing Rs.3,000/- per month as salary.

8. One of the employee working as Assistant in the insurance company is examined as RW.1 and he deposed that their company issued policy to vehicle bearing No.AP-7V- 789 covering period from 14.05.2003 to 13.05.2004 and as per the particulars furnished by RTA authorities, Narasaraopet, the applicant had no valid and effective driving licence at the time of accident and thereby there is violation of policy conditions. But as seen from the record, original driving licence of the claimant is marked as Ex.A5 and lower authority has referred to the licence in its order but no finding is given that the said driving licence is not valid and effective as on the date of accident.

9. The main objection of insurance company is as policy conditions are violated it is not liable to pay any compensation, but here, this is not a claim under Motor Vehicles Act or third party claim and it is claimed by employee under provisions of Workmen's Compensation Act. Therefore, objection of insurance company is not tenable particularly when it is established that claimant sustained injuries during course of his employment and that there is a valid policy in force as on the date of accident and driver has got driving licence. Though appellant contended before lower authority that there is no employee and employer relationship between first respondent and second respondent herein, the same was not accepted by lower authority in view of clinching evidence of AW.1. I do not find any wrong in the order of lower authority in accepting the relationship of employee and employer between respondents No.1 and 2 herein.

10. The next objection of insurance company is that the lower authority has taken Rs.3,700/- per month as wages of the

injured when the injured himself pleaded that he was drawing Rs.3,000/- per month as salary.

11. As seen from the material, claimant has not produced any evidence in proof of his wages. Even in cross-examination, he admitted that he has not produced any proof to show that he was drawing Rs.3,000/- per month as salary. As there was no positive evidence to prove the wages of injured, lower authority has taken into consideration the minimum wages as per G.O.Ms.No.30, dated 27.07.2000 and fixed compensation by taking the minimum wages prescribed for a heavy vehicle driver which was Rs.2587/- + VDA of Rs.1113/- which comes to Rs.3,700/- per month. I do not find any wrong in the approach of lower authority since this being a beneficial legislation, the minimum wages applicable to the profession of injured/claimant are rightly taken and objection of insurance company on this aspect is not at all tenable.

12. On a scrutiny of the material on record, I am of the considered view that lower authority has not committed any error in granting compensation and objections raised by insurance company are not tenable and that there are no grounds to interfere with the order of lower authority.

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

14. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

**S. RAVI KUMAR, J**

Date: 01-04-2016.
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