THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.60 of 2011

Date:05.07.2016

Between:

National Insurance Company Ltd.,
Rep by its Divisional Manger, D.O.,
Bank Street, Koti, Hyderabad.

... Appellant.

AND

Smt.Satyamma and others.

...Respondents.

The Court made the following :

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JUDGMENT:

This appeal is preferred against orders dated 21-6-2007 in W.C.No.17/2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar.

2. Respondents 1 to 3 herein submitted application to Commissioner for Workmen's Compensation contending that the deceased Chinna Ranganna was working as a laborouer on tractor bearing No.AP 22 B 4739 belonging to fourth respondent herein and that on 05-8-2003, the said Chinna Ranganna while returning after completion of agriculture field work, he fell down from the tractor due

to rash and negligent driving of the driver and as he died during course of his employment, they are entitled for compensation of Rs.4,00,000/-. They contended that the deceased was earning Rs.4,000/- per month as wages. Insurance Company resisted the claim contending that there is no relationship of employee and employer between deceased and fourth respondent herein and that there is no liability on their part to pay any compensation. Fourth respondent herein filed counter contending that the deceased was not a workman under him and that he never paid any wages. On these contentions, lower authority conducted enquiry during which two witnesses were examined and seven documents were marked on behalf of claimants and one witness was examined and one document was marked on behalf of Insurance Company. On a over all consideration of oral and documentary evidence, Claims Tribunal granted Rs.2,36,540/- as compensation and aggrieved by the same, Insurance Company preferred the present appeal.

3. Heard both sides.

4. Advocate for appellant submitted that the deceased is no other than grand son of fourth respondent i.e., the owner of the vehicle and son of the driver of the vehicle and therefore, there is no employee and employer relationship, but the lower authority erroneously fixed liability on the Insurance Company. He submitted that even from the own version of the claimants, the vehicle was sent to work in the fields of one Basheer and there was no trailer for loading and unloading therefore, the contention of the deceased that he was engaged on the tractor is not tenable. He submitted that as the risk is not covered under the policy, Insurance Company is not liable, but the lower authority wrongly fixed liability and the order of the lower authority is liable to be set aside.

5. On the other hand, Advocate for claimants submitted that policy is a package policy and from the evidence, particularly inquest report, it is clear that the deceased went along with the tractor to attend the agricultural work and while returning, he met with an accident, therefore the objection of the Insurance Company is not tenable. He further submitted that simply because the deceased was related to the owner, his contention that he was working under the owner cannot be thrown out in the absence of any evidence and the lower authority rightly granted compensation and that there are no grounds to interfere.

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

7. There is no dispute that Chinna Ranganna died on 05-8-2003 when he fell down from the tractor due to rash driving of the driver of the vehicle. The main contention of the Insurance Company is that there is no relationship of employee and employer between deceased and fourth respondent herein. Insurance Company mainly relied on the plea taken by the fourth respondent herein by way of counter before the lower authority. In the counter, fourth respondent supported the version of the Insurance Company, but subsequently he did not participate in the enquiry and he did not appear as a witness to substantiate the plea that was taken in the counter.
As rightly pointed out by Advocate for claimants, evidence of A.Ws.1 & 2 and documents-Exs.A1, A2 & A3 would clearly disclose that the deceased was a worker under fourth respondent herein as on the date of accident. To rebut that evidence, Insurance Company examined R.W.1, but he has no personal knowledge and his evidence is not supported by any other evidence. It is well known proposition

of law that pleading is not evidence and the plea of party has to be substantiated with convincing evidence and in the absence of evidence, such plea would have no bearing. The Insurance Company ought to have taken steps to get the owner summoned at least as Court witness to support their plea that there is no relationship of employee and employer between the deceased and fourth respondent. Admittedly, the fourth respondent herein after filing counter did not participate in the enquiry and once he remained *ex-parte*, the presumption is that, that party has no defence for the claim of the opposite party. In the absence of any evidence, the plea of fourth respondent cannot be accepted and the Insurance Company cannot rely on such plea. This aspect was dealt by the lower authority and discarded the objection of the Insurance Company and I do not find any wrong in the order of the lower authority for granting compensation and fixing the liability on the Insurance Company.

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

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

JUSTICE S. RAVI KUMAR

Date:05.07.2016

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