

HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A.No.1123 of 2008

JUDGMENT:

This appeal is preferred questioning order dated 15.02.2007 in W.C.No.86 of 2004 on the file of Commissioner for workmen's Compensation and Assistant Commissioner of Labour, Vijayawada, Krishna District.

2. Appellant herein submitted application to the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour (for short "lower authority") claiming compensation of Rs.3,50,000/- for the injuries sustained by him during course of his employment. Lower authority conducted enquiry, during which, four witnesses are examined and 10 documents are marked on behalf of claimants besides marking three third party documents. Lower authority without considering the evidence, dismissed the application solely on the ground that establishment is covered by the provisions of Employees' State Insurance (ESI) Act, 1948, therefore application filed under the Workmen's compensation Act is not maintainable.

3. Heard both sides.

4. Advocate for appellant submitted that the lower authority erroneously dismissed the application under the

impression that the establishment of first opposite party was covered by ESI, though there was no such plea either from the establishment or from the insurance company. He submitted that lower authority instead of considering the evidence on record, dismissed the claim on technical ground, which was not even raised by respondents. He submitted that it is a fit case to remit back to the lower authority for fresh consideration with the evidence available on record.

5. Advocate for insurance company submitted that the lower authority may be directed to dispose of the case expeditiously on the basis of material available on record without causing any further delay.

6. Considering the submissions of both sides and on perusal of the impugned order dated 15.02.2007 in W.C.No.86 of 2004, I am of the view that this is a fit case where the matter has to be remitted back to the lower authority for fresh consideration.

7. For these reasons, the impugned order dated 15.02.2007 in W.C.No.86 of 2004 is set aside and the matter is remitted back to lower authority for fresh disposal and the lower authority shall dispose of the case, as expeditiously, as possible, preferably, within two (02) months from the date of receipt of records. Parties shall appear before the lower authority on 21.07.2016 and the learned advocates appearing for the parties shall intimate

the same to their respective parties.

8. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Miscellaneous Petitions, pending in this Appeal, if any, shall stand closed.

S. RAVI KUMAR, J

Date: 21-06-2016.

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