

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CMA No.4848 of 2004

Date:28.01.2016

Between:

Indira Gandhi Zoological Park,
Rep by its Curator, Zoo Park,
Visakhapatnam and anohter.

... Petitioner.

AND

Bora Ramulu and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CMA No.4848 of 2004

JUDGMENT:

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This appeal is preferred questioning Award dated 25-05-2004 in W.C.No.57/2003 on the file of Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour, Circle-I, Visakhapatnam.

2. First and second respondents herein submitted application to the Commissioner for Workmen's Compensation contenting that their daughter Bora Ravanamma was working as laborour with first appellant herein and that on 28-11-2003, while she was attending to her normal duties and when she was carrying water to the bears

enclosure, she fell down into the bears enclosure and due to attack of the bears, she sustained injuries and as a result, she died at King George Hospital, Visakhapatnam and that claimants are entitled for compensation. The claim was resisted by the appellants herein contending that there is no employee and employer relationship between the deceased and the appellants and that she was engaged by the contractor i.e., third respondent herein and that there is no liability on the appellants. They further contended that appellants engaged third respondent on contract basis, who in turn engaged the deceased for executing that work and that the claim of the claimants if any must be against third respondent herein. Commissioner for Workmen's Compensation, on a consideration of oral and documentary evidence, disbelieved the version of the appellants and held that there is employee and employer relationship between the deceased and appellants and granted a sum of Rs.2,32,960/- as compensation. Aggrieved by the same, present appeal is preferred.

3. Heard arguments.

4. Advocate for appellants submitted that the lower authority is not justified in granting compensation when there is no employee and employer relationship between the deceased and the appellants. It is submitted that there is no material on record to show that the deceased was an employee under the appellants and as such the award passed by the lower authority against the appellants is not legal.

5. On the other hand, Advocate for claimants submitted that the material evidence produced before the lower authority clearly establish the relationship of employee and employer and the third respondent herein specifically denied in his counter that the deceased was not an employee under him and therefore, the lower authority is

right in granting compensation. He further submitted that now the appeal against the third respondent is already dismissed on 02-7-2011 and no steps are taken by the appellants and on that ground also, the appeal has to be dismissed. It is further submitted that Respondent No.1 died and Respondent No.2 is the only legal heir of the deceased.

6. Now the point that would arise for my consideration in this appeal is whether there are any grounds to interfere with the Award dated 25-05-2004.

7. There is no dispute that the deceased died on 28-11-2003, while attending to duties in the Zoological Park, Visakhapatnam near the bears enclosure due to attack of the bears. One of the claimants is examined as P.W.1 and considering the evidence of claimants and the witness examined on behalf of the claimant which is supported and corroborated by documents-Exs.A1 to A5, lower authority held that the deceased died during the course of employment with the first appellant herein. Though the appellants contended that they have engaged third respondent herein as a contractor and that third respondent in turn employed the deceased, the third respondent denied the relationship of employee and employer between himself and the deceased. The appellants have not produced any evidence either oral or documentary to show that they engaged third respondent as contractor and that the deceased was working under the third respondent. As seen from the record, no witnesses are examined on behalf of the appellants and no documents are marked on behalf of the appellants. If really, the third respondent is engaged as a contractor and the deceased was working under him, there must be record in the office of the appellants being a Government department, for the reasons best known to the appellants, they have not produced any material before the lower authority to substantiate

their plea that was taken in the counter. Lower authority has rightly accepted the evidence of A.W.1 and A.W.2 which is supported and corroborated with the documents-Exs.A1 & A5 which was not at all rebutted.

8. On a scrutiny of the material, I am of the view that there are absolutely no grounds to interfere with the Award dated 25-05-2004 and the that the lower authority has rightly considered the evidence on record for awarding compensation in favour of respondents 1 & 2.

9. For these reasons, appeal is dismissed. No costs.

10. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:28.01.2016

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