

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.795 of 2005

JUDGMENT:

This appeal is preferred questioning order dated 27.01.2004 in W.C.No.57 of 2003 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad.

2. First respondent filed application before the Commissioner for Workmen's Compensation contending that late Mohd. Ismail, who is her husband, was working under 2nd respondent herein on lorry bearing No.ADQ 5674 and on 24.01.2001 he went to Mother India Garage Workshop for getting the lorry repaired and during course of his employment he died and that she is entitled for compensation of Rs.3,00,000/-. Insurance Company resisted the claim of applicant and contended that the death was not during the course of employment under 2nd respondent herein. On these contentions, lower Authority enquired into the matter and on a consideration of material evidence produced on behalf of both parties held that the deceased died during course of employment and by taking the wages of the deceased at Rs.3,175/- and the factor at 197.06 fixed the compensation of Rs.3,12,833/-. Aggrieved by the said order, Insurance Company preferred the present appeal.

3. Heard arguments.

4. Advocate for Insurance Company submitted from the record and evidence it is clear that the driver was found dead in another lorry, but not in lorry on which he claims to work as driver. He further submitted that the lower Authority was not correct in arriving at the conclusion that the deceased died during course of employment. He further submitted that the deceased was sleeping in vehicle bearing No.AP 28 P 9066, with which appellant is no way connected and the lower Authority ought to have dismissed the claim of 1st respondent. He further submitted that Commissioner has erred in calculating the loss of income and fixing the compensation, therefore, the order of the lower Authority is liable to be set aside.

5. On the other hand, advocate for respondent No.1 submitted that no evidence is adduced on behalf of Insurance Company except marking the insurance policy. He submitted that the lower Authority on a consideration of oral and documentary evidence of applicant, postmortem report and documents Exs.A.1 and A.2 held that the deceased died during course of his employment and there was a valid policy as on the date of the death, therefore granted compensation and that there are no grounds to interfere with the findings of lower Authority.

6. Now the point that would arise for my consideration in this appeal is

Whether the order in W.C.No.57 of 2003 on the

file of Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour-III, Hyderabad, is legal, proper and correct?

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POINT :

7. It is the case of 1st respondent that her husband late Mohd. Ismail went to Mother India Garage Workshop on lorry bearing No.ADQ 5674 to get repaired it in the workshop and on the intervening night of 25/26.12.2000, her husband was found dead in another vehicle. A complaint was given before the Police by the owner of the Mother India Garage Workshop and police registered it as Crime No.571 of 2000. F.I.R. contents are supporting and corroborating with the version of applicant as to the manner of death. The inquest report and postmortem certificate also supports the version of applicant as to the death of deceased Mohd. Ismail. From the evidence it is also clear that relationship of employee and employer between deceased Mohd. Ismail and 2nd respondent herein is duly established. From the counter filed by 2nd respondent, it is clear that the deceased was entrusted with repairing work and that he went to workshop on the fateful day, this version supports the plea that was taken by applicant which would clearly show that the deceased was under the course of employment at the time of the death. Simply because, the deceased was found in

another vehicle that cannot absorb the liability of the Insurance Company in view of the fact that deceased went to garage only in connection of repair to lorry bearing No.ADQ 5674, on which he was working as driver. Considering these aspects, lower Authority has not accepted the objection of the Insurance Company and recorded that Insurance Company is bound to pay compensation to the dependants of the deceased i.e., 1st respondent herein. I do not find any wrong appreciation of material evidence nor any illegality in the award passed by the lower Authority. When postmortem examination report and inquest report clearly support the version of applicant with regard to cause of death, objection of the Insurance Company is not at all tenable and lower Authority has rightly discarded the objection raised on behalf of Insurance Company. On a scrutiny of the entire material, I am of the considered view that lower Authority has not committed any error in granting compensation to 1st respondent herein and that there are no grounds to interfere with the same.

8. For these reasons, appeal is dismissed.

9. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

9th February 2016.

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