

HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.978 of 2008

JUDGMENT:

This appeal is preferred questioning order dated 20.12.2005 in W.C.No.36 of 2003 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar.

2. R-1 to R-4 herein filed application before the Commissioner for Workmen's Compensation (for short "lower authority") contending that the deceased-K.Anjaneyulu was an employee under 5th respondent herein working on Tipper bearing No.AP 04/T-8568 of M/s Sangam Stone Crushers, Nellore and on 30.05.2003 at about 9.00 a.m while he was attending to his work, due to negligent driving of the driver of tipper bearing No.AP 04/T-8568, the deceased died in the accident and that the applicants i.e., 1st and 2nd respondents being parents, 3rd and 4th respondents being minor brothers are entitled for lump sum compensation of Rs.3,00,000/-. The claim was resisted on behalf of insurance company contending that there is no employee and employer relationship between the deceased and 5th respondent herein and contended that claimants have to prove that the deceased getting wages of Rs.150/- per day and that insurance company is not liable to pay any compensation. On these contentions, lower authority conducted enquiry, during which, two witnesses are examined and 6 documents are marked on behalf of claimants, whereas, two witnesses are examined and 1 document is marked on behalf of insurance company, and on a over all consideration of oral and documentary evidence, lower authority

granted Rs.2,25,258/- as compensation by taking the wages of deceased at Rs.2002.75 ps per month as per G.O.Ms.No.30 LET & F (Lab-II) dated 27.07.2000. Now aggrieved by the order of lower authority, insurance company preferred the present appeal.

3. Heard arguments.

4. Advocate for appellant submitted lower authority was not correct in holding that there is a relationship of employee and employer between deceased and 5th respondent herein, in the absence of evidence on behalf of claimants to establish the relationship of employee and employer. He submitted that the deceased was a labourer under the contractor and he is not employee of 5th respondent herein, therefore insurance company is not liable to pay any compensation. He submitted that the Administrative Officer is examined as RW.1 on behalf of insurance company supporting the plea of insurance company. He submitted RW.2, the investigator also deposed in support of the plea of insurance company and investigator's report would disclose that the deceased was not at all concerned with Sangam Stone Crushers and therefore the order passed by the lower authority is not tenable.

5. On the other hand advocate for claimants supported the order of lower authority.

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, Mahabubnagar is legal, proper and correct?

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POINT:

7. As already referred above, it is specific case of

claimants that the deceased was employed to load crushed stones in the lorry and he is under the employment of 5th respondent herein as on the date of accident i.e., on 30.05.2003. One of the claimants is examined as AW.1 and she deposed that her son Anjaneyulu was employed on tipper bearing No.AP 04/T-8568 for loading and unloading of stones at Sangam Stone Crushing quarry and that on 30.05.2003 the deceased sustained injuries, due to which, he died while under the employment of 5th respondent herein. AW.2 deposed that the deceased worked along with them on 30.05.2003 for loading and unloading of stones and that the deceased died due to negligent driving of the tipper driver. These two witnesses were cross-examined on behalf of insurance company and nothing could be elicited from them to discredit their testimony with regard to relationship of employee and employer between deceased and 5th respondent herein. The main witness for insurance company is RW.2, who is investigator appointed by the insurance company. He deposed that he went to Sangam Stone Crushers to meet Managing partner Smt B. Madhavi, but she was not available and her husband Sri Madan Mohan was present, who informed him that the deceased and other coolies are no way concerned with the Sangam Stone Crushers. According to his evidence, Madan Mohan informed him that responsibility of securing labourers was given to a maistry (contractor) to bring labourers. As seen from the record, this RW.2 has not recorded the statement of either Madan Mohan or Smt B. Madhavi to show that through them he came to know that the deceased was not under the employment of 5th respondent herein. He has also not examined the alleged maistry. Insurance company has not examined this Madan Mohan as a witness during enquiry before

lower authority. Considering these aspects, lower authority has accepted the evidence of AW.1 and AW.2 and held that claimants have proved the relationship of employee and employer between deceased and 5th respondent herein. I do not find any wrong appreciation of evidence by the lower authority. Evidence of RW.2 was rightly discarded as the same is not supported and corroborated by any other evidence particularly when the statement of Madan Mohan was not recorded by RW.2 and the said person was not examined as a witness during enquiry before lower authority. This is the only ground on which insurance company challenged order of the lower authority. When the evidence of AW.1 and AW.2 is clinching and convincing with regard to relationship of employee and employer between the deceased and 5th respondent herein, the objection of insurance company with regard to findings of lower authority cannot be accepted. Lower authority has elaborately discussed the entire evidence and came to a right conclusion and I do not find any ground to interfere with the same.

8. For these reasons, I am of the view that there are no grounds to interfere with the order dated 20.12.2005 in W.C.No.36 of 2003 of lower authority and that appeal is devoid of merits and liable to be dismissed.

9. Accordingly, this C.M.A. is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 23-03-2016.

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