

HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.245 of 2009

JUDGMENT:

This appeal is preferred questioning order dated 14.05.2007 in W.C.No.87 of 2000 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Kurnool.

2. First respondent herein submitted application to the Commissioner for Workmen's Compensation (for short "lower authority") contending that he is working as cleaner on lorry bearing No.AP 21T 888 belonging to second respondent herein on a salary of Rs.1,000/- per month and while discharging his duties as cleaner, he sustained injuries, which caused permanent disability and that he is entitled for compensation of Rs.1,00,000/- . Insurance company resisted the claim mainly on the ground that there is no relationship of employee and employer between claimant and owner i.e., first and second respondents herein. Lower authority discarded that objection and granted compensation of Rs.50,515/- with interest. Aggrieved by the same, present appeal is preferred.

3. Heard both sides.

4. Advocate for appellant submitted that lower authority without there being any evidence as to the relationship of employee and employer between first and second respondents herein, granted compensation solely relying on Ex.A1-Medical certificate, whereunder, profession of injured was referred to as cleaner. He submitted that lower authority grossly erred in granting compensation on the basis of Ex.A1 document and as the

claimant failed to prove the relationship of employee and employer and that he sustained injuries during course of employment, the liability fixed on the insurance company is not correct and the appeal has to be allowed.

5. On the other hand advocate for claimant submitted that an opportunity may be given to claimant to adduce necessary evidence to prove the relationship of employee and employer, and for that, he prayed that the matter may be remitted back to lower authority.

6. Advocate for insurance company has opposed the request of claimant and submitted that if for any reason this Court is inclined to remit back the matter, insurance company may be permitted to withdraw the amount lying to the deposit of lower authority.

7. I have perused the material papers including the impugned order dated 14.05.2007 in W.C.No.87 of 2000. As rightly pointed out by advocate for insurance company only on the basis of recitals in Ex.A1-Medical certificate, lower authority recorded a finding that employee and employer relationship between first and second respondents herein is established.

8. Considering this aspect and the request of claimant, I feel that an opportunity be given to claimant to prove his employment with the owner of the lorry in order to make the claim under the provisions of Workmen Compensation Act.

9. For these reasons, impugned order dated 14.05.2007 in W.C.No.87 of 2000 is set aside and the matter is remitted back to lower authority for fresh disposal by giving opportunity to both parties to adduce further evidence. As the matter is remitted

back, insurance company is permitted to withdraw the amount lying to the credit of lower authority and that lower authority shall dispose of the case, as expeditiously, as possible, by giving opportunity to both parties to lead evidence.

10. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Miscellaneous petitions, if any pending, in this appeal shall stand closed.

S. RAVI KUMAR, J

Date: 30-06-2016.

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