HONOURABLE SRI JUSTICE S.RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1081 OF 2008

Dated 1-8-2016

Between:

United India Insurance Co., Ltd., Div.Office, Kurnool represented by its Div.Manager through its Regional Office, Hyderabad represented by its Deputy Manager.

..Appellant.

And:

Dudyala Balappa and others.

..Respondents.

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JUDGMENT:

This is an appeal preferred against order dated 22nd July, 2006 in W.C.No.39 of 2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar.

Respondents 1 and 2 herein submitted application to Commissioner for Workmen's Compensation contending that their son D.Venkataiah while working as Labour on the tractor trailer belonging to 3rd respondent herein died during course of his employment on 6-1-2004 and that they are entitled for compensation of Rs.3,00,000/-.

Appellant herein i.e., Insurance Company contended that deceased was only a gratuitous passenger and there is no relationship of employer and employee between 3rd respondent and the deceased herein and the policy does not cover the risk of the deceased. On these contentions, Commissioner for Workmen's Compensation conducted enquiry during which, one witness was examined and eight documents were marked on behalf of claimants and one witness was examined and one document was marked on behalf of Insurance Company and on an overall consideration of oral and documentary evidence, Commissioner for Workmen's Compensation granted compensation of Rs.2,58,079/- together with stamp fee of Rs.518/-, advocate fee of Rs.500/- i.e, total of Rs.2,59,097/- and questioning the same, Insurance Company preferred the present appeal.

Heard both sides.

Advocate for appellant submitted that as per policy, it covers only one employee, i.e., driver of the vehicle, therefore, the risk of the deceased is not covered and the lower authority erred in granting compensation to claimants.

On the other hand, advocate for claimants submitted that there is no specific mention in the policy that premium is paid only for driver and that employee can be any one and therefore, Commissioner for Workmen's Compensation rightly granted compensation and there are no grounds to interfere with the same.

Now the point that would arise for my consideration in this appeal is whether the order of Assistant Commissioner of Labour is legal, correct and proper?

POINT:

It is the contention of respondents 1 and 2 herein that the deceased Venkataiah died in an accident on 6-1-2004 during course of his employment as labour. First claimant is examined as A.W.1 and through him certified copy of F.I.R., certified copy of charge sheet, certified copy of Post Mortem report and certified copy of Motor Vehicles Inspector's Report are marked as Exs.A.1 to A.4.

As seen from these documents, one Balayya gave complaint to police in which it is narrated that the deceased sustained injuries and died in accident that occurred to tractor trailor bearing Nos.AP 22 D 2883 and 2884 and that the deceased was a workman. On the basis of this report, police conducted investigation and as per investigation, the deceased along with others went for coolie work on tractor trailor bearing Nos. AP 22 D 2883 and 2884 and while returning, vehicle met with an accident in which the deceased died. Even the report of Motor Vehicles Inspector also supports the version of claimants that deceased was a workman on the vehicle at the time of accident. To rebut this part of evidence, except relying on self serving testimony of Officer of Insurance Company, no other material is produced. Even R.W.1 has no personal knowledge and his main version is that Insurance Company has no liability as the policy has not covered the risk of deceased.

The main contention of appellant is that premium was paid only for one employee and that employee should be driver of the tractor, therefore, deceased cannot be treated as employee, as such, there is no liability on Insurance Company.

The very same objection was raised before the lower authority and the learned Commissioner for workmen compensation recorded a finding that employee can as well be driver, cleaner or any other person including labour and therefore, labourer can not be excluded from the definition of employee.

I have perused the Insurance policy marked as Ex.D.1 and as seen from it, premium was paid both by tractor and trailor and sum of Rs.25/- was collected to cover the risk of one employee. As rightly observed by lower authority, there is no specific mention in the policy that this premium was paid only towards driver and when there is no specific reference as to who is the employee, it can be either driver, cleaner or labourer as rightly interpreted by the lower authority. Therefore, the objection of Insurance Company that this premium paid has to be treated towards risk of the driver only cannot be accepted in the absence of specific evidence. When the Insurance Company collected premium for one employee and the record particularly evidence of A.W.1 and documents Exs.A.1 to A.4 do show that the deceased was a workman under 3rd respondent herein and died during course of his employment in the accident that was occurred on 6-1-2004 to the vehicle, the objection taken by the Insurance company cannot be sustained.

On a scrutiny of material, I am of the view that lower authority has rightly appreciated evidence on record and came to a right conclusion that it has not committed any error in awarding compensation to the claimants i.e., respondents 1 and 2 herein and that the appeal is devoid of merits.

For these reasons, appeal is dismissed. No costs.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 1-8-2016.

Dvs.

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