

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.317 of 2008

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Date:08.08.2016

Between:

Smt. Challa Ramana and others.

... Appellants.

AND

Salem Madhusudan Reddy and another.

... Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.317 of 2008

JUDGMENT:

This appeal is preferred against order dated 02-02-2008 in W.C.No.56/2006 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle-II, Guntur.

2. Appellants herein submitted application to Commissioner for Workmen's Compensation contending that Late Challa Venkateswarlu was employed as a Driver on lorry bearing No.AP-7W-4679 owned by first respondent herein on a monthly salary of Rs.5,000/- and that on 15-01-2006, he died during course of his employment. Insurance Company opposed the claim and contended that claimants have to strictly prove the relationship of employee and employer and that the deceased died during course of his employment. Lower authority conducted enquiry, during which two witnesses were examined and five documents were marked on behalf of the claimants and no witness was examined and no document

was marked on behalf of the Insurance Company and on a over all consideration of material on record, dismissed the application holding that there is no material to show that deceased worked as driver under first respondent herein and that he died during course of his employment.

3. Heard both sides.

4. Advocate for appellants submitted that the cleaner who gave FIR was examined as A.W.2, but unfortunately during evidence, he stated that he is not an eye witness to the accident and he do not know anything about the complaint. It is submitted that from the record, it is clear that police filed a final report on 30-03-2006 wherein it was recorded that as per their investigation, the deceased who was driver of lorry bearing No.AP-7W-4679, while deboarding the lorry, accidentally fell down from the lorry, sustained injury that result in death, but the concerned officer, who conducted the investigation and that the inquest panchyats were not examined on behalf of the claimants particularly when the cleaner stated that he is not a witness and he has not given any complaint. It is submitted that an opportunity may be given to the claimants to prove the relationship of employee and employer and that the deceased died during course of employment by examining witnesses concerned with the inquest report and final report and party should not suffer for the laches of counsel in the lower Court.

5. Advocate for Insurance Company opposed the request of Advocate for claimants for remand on the ground that there are no valid reasons for remitting back the matter. He further submitted that in case the matter is remanded, it may be clarified that claimants cannot claim any interest for this period.

6. Now the point that would arise for my consideration in this appeal is whether order of the Court below is legal, proper and correct?

7. **Point:-** I have perused the material papers including impugned

order dated 02-02-2008. Lower authority dismissed the claim of the claimants solely on the basis of evidence of A.W.2 who deposed in his evidence that he is not an eye witness to the accident and he did not give any police complaint, but the fact remains that a report was given to the police basing on which, investigation was conducted and final report was filed. The lower authority has not discussed anything with regard to evidence of claimants and the documents that are marked on behalf of the claimants. On a perusal of the impugned order,

I have no hesitation in saying that it is a cryptic order without properly appreciating material on record. As the Advocate for claimants sought for remand to enable the claimants to prove the documents namely; inquest report and final report by examining concerned witnesses, I deem it proper to consider the request of claimants to enable them to prove the relationship of employee and employer and the claim made.

8. For these reasons, impugned order dated 02-02-2008 in W.C.No.56/2006 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle-II, Guntur is set aside and the matter is remitted back to the lower authority for fresh consideration by giving opportunity to both parties to lead evidence on the issue of employee and employer relationship. As this is a old matter of 2006, the lower authority shall decide the matter as expeditiously as possible, preferably within three months from the date of receipt of the order.

9. Accordingly, appeal is disposed of and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed. No costs.

JUSTICE S. RAVI KUMAR

Date:08.08.2016

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