

HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A.Nos.1160 & 1161 of 2008

COMMON JUDGMENT:

These appeals are preferred questioning common order dated 11.07.2005 in W.C.No.2 of 2003 and W.C.No.3 of 2003 on the file of Commissioner for Workmen's Compensation and Assistant commissioner of Labour, Warangal.

2. Respondents No.1 to 3 in CMA No.1160 of 2008 and respondents No.1 and 2 in CMA No.1161 of 2008 submitted separate applications to the Commissioner for Workmen's Compensation (for short "lower authority") contending that A.Ravi, D.Sambaiah and others were employees under Merugu Bondyalu and A.Ravi and D.Sambaiah died during course of their employment. They contended that on 30.09.2002, all these labourers were on duty under the employment of Merugu Bondyalu for transporting neem wood to the house of Merugu Bondyalu and that due to rash and negligent driving of the driver of vehicle, the vehicle fell into canal and turned turtle, as a result, D.Sambaiah and A.Ravi died and the claimants being legal representatives of the deceased-employees are entitled for compensation of Rs.4,50,000/-. This claim was resisted by both the owner and insurance company contending that the deceased persons are not employees of Merugu Bondyalu and that there is no liability on the part of owner and insurance company to

pay any compensation. On these contentions, lower authority conducted enquiry, and on a consideration of oral and documentary evidence of both parties, granted compensation of Rs.2,16,910/- to claimants in W.C No.2 of 2003 and Rs.1,69,440/- to claimants in W.C.No.3 of 2003. Aggrieved by the same, insurance company preferred CMA No.1160 of 2008 against order in W.C No.3 of 2003 and CMA No.1161 of 2008 against order in W.C No.2 of 2003.

3. Respondents in spite of service of notice nether appeared in person nor through any advocate.

4. Heard advocate for appellant.

5. The main contention of advocate for appellant is that lower authority erred in holding that the deceased persons were employees on the insured vehicle though employer himself categorically denied the employment in his counter. He submitted that lower authority grossly erred in awarding compensation though claimants did not prove the relationship of employee and employer between deceased and Merugu Bondyalu. He further submitted that the findings of lower authority are contrary to law, therefore order of lower authority in both the cases i.e., W.C.Nos. 2 of 2003 & 3 of 2003 are liable to be set aside.

6. Now the point that would arise for my consideration is:

Whether the common order of the Commissioner for Workmen's Compensation &

Assistant Commissioner of Labour, Warangal is legal, proper and correct?

POINT:

7. I have perused the material papers including impugned common order dated 11.07.2005. The main objection of appellant is that deceased persons were not employees of Merugu Bondyalu, but the lower authority without considering that objection treated them as employees that died during course of employment.

8. As seen from the record, wife of one of the deceased/employees, and one co-worker were examined on behalf of claimants and both of them categorically deposed that deceased A.Ravi and D.Sambiah were employees under Merugu Bondyalu and on the date of accident i.e., 30.09.2002 both of them attended to duty of loading and unloading material into Tractor/Trailer bearing No.AP-36U-3793/3794 and they assertively stated that both the deceased were discharging their duties as labourers at the time of accident. On behalf of insurance company and owner, no witnesses are examined and evidence of PWs.1 and 2 with regard to relationship of employee and employer between deceased persons and Merugu Bondyalu remained unchallenged and un-rebutted.

9. Now the only argument of advocate for appellant is since a specific plea was taken by both the insurance company and owner/employer, disputing the relationship of employee and employer, the evidence of

PWs.1 and 2 is not sufficient to come to the conclusion that the deceased persons were employed by Merugu Bondyalu. But the argument of advocate for appellant cannot be accepted because any plea without evidence is of no use. When the witnesses PWs.1 and 2, on oath, deposed both the deceased persons were employees of Merugu Bondyalu as on 30.09.2002 and that they were entrusted with the work of loading and unloading of neem wood into the tractor, burden is on the respondents to disprove that. Admittedly, no evidence is produced on behalf of owner and insurance company to discard the testimony of these two witnesses PWs.1 and 2. Lower authorities rightly recorded a finding that both deceased employees under Merugu Bondyalu on the date of their death and granted compensation.

10. I do not find any wrong in the findings of lower authority in accepting the deceased persons as employees of Merugu Bondyalu. The appellant except taking a plea, has not produced any evidence to prove their plea, therefore, objection of insurance company is not tenable.

11. For these reasons, I am of the view that there are no grounds to interfere with the findings of the lower authority and that the appeals are devoid of merits and liable to be dismissed.

12. Accordingly, these two Civil Miscellaneous Appeals are dismissed. No costs. Miscellaneous Petitions, if any pending, in these Appeals, shall stand closed.

S. RAVI KUMAR, J

Date: 19-04-2016.
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