

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.56 of 2011

JUDGMENT:

This appeal is preferred against order dated 30.04.2003 in W.C.No.122 of 2001 on the file of Commissioner for Workmen's Compensation and Assistant commissioner of Labour, Nizamabad.

2. First respondent herein submitted application to the Commissioner for Workmen's Compensation (for short "lower authority") contending that he was working as labourer on lorry bearing No. ADI 3373 under the employment of second respondent herein on a monthly salary of Rs.3,000/- and on 03.07.1999 at about 9.45 a.m. while he was proceeding to Sirnapally jungle to load wooden logs into lorry, due to rash and negligent driving of driver of the lorry, dashed against a tree near Sirnapally Railway gate, Dharpally Mandal, Nizamabad District, and he sustained fracture to his right leg and other multiple and grievous injuries all over the body. Therefore, he is entitled for compensation of Rs.2,00,000/- with interest. Second respondent herein filed counter admitting the relationship of employee and employer and so also salary at Rs.3,000/- per month and contended that claimant received injuries during course of his employment. Insurance company disputed the claim contending that owner alone is liable to pay compensation, and on these allegations, lower authority conducted enquiry, during which, two witnesses are examined and 5 documents are marked on behalf of claimant and one witness is examined and 2 documents are marked on behalf of insurance company. Considering the oral and

documentary evidence of both parties, lower authority granted Rs.75,373/- as compensation by taking loss of earning capacity at 35% and monthly wages of the injured at Rs.1800/-. Now aggrieved by the order of lower authority, insurance company preferred the present appeal.

3. First respondent in spite of service of notice neither appeared in person nor through any advocate. Second respondent refused to receive notice.

4. Heard advocate for appellant.

5. Advocate for appellant submitted lower authority failed to see that there is no direct liability on the part of insurance company, as there is no relationship of employee and employer between first and second respondents herein. He submitted lower authority failed to see that the injured was an unauthorized and gratuitous passenger in a goods vehicle and policy did not cover the risk and insurance company is not liable. He further submitted RW.1 deposed in his evidence that the injured was not an employee under second respondent herein and that part of evidence is not considered by the lower authority. Therefore, order of lower authority is liable to be set aside.

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, Nizamabad is legal, proper and correct?

POINT:

7. As seen from the record, second respondent herein filed counter admitting the relationship of employee and employer between himself and injured and he even issued salary certificate

to that effect which is marked as Ex.B2. The main objection of insurance company is that as there is no relationship of employee and employer between first and second respondents herein and that insurance company is not liable. The injured is examined as PW.1 and he deposed in his evidence that he was working as labourer on lorry bearing No.ADI 3373 belonging to second respondent herein on a monthly salary of Rs.3,000/- and on 03.07.1999 he was instructed by owner of the lorry to proceed to Sirnapally jungle to load wooden logs into lorry and while he was proceeding in the lorry to the work spot, he received injuries due to negligent driving of the lorry driver and that he sustained all the injuries during course of his employment. Through him, documents Ex.A1 to Ex.A5 are marked, and in the cross-examination, except putting suggestions, nothing could be elicited from him to discredit his testimony with regard to relationship of employee and employer. As against this evidence, RW.1-Senior Assistant working in the insurance company is examined, but he has no personal knowledge and he only stated that the injured is only a gratuitous passenger travelling in a goods vehicle. But the evidence of RW.1 is not supported and corroborated by any other material. Whereas, the evidence of injured-PW.1 is supported and corroborated by salary certificate issued by owner, which is marked as Ex.B2. RW.1 mainly contended that insurance policy do not cover the risk of labourers and therefore injured is not entitled for compensation. Lower authority has not accepted that objection basing on the evidence of PW.1 and Exs.B1 and B2 documents.

8. On a scrutiny of the material, I am of the view that lower authority has rightly accepted the evidence of PW.1 and Ex.B2 document, as against evidence of RW.1 and I do not find any

wrong in the approach of lower authority. When the owner himself admitted the relationship of employee and employer, and produced salary certificate, the burden is shifted on the insurance company to rebut the same. But insurance company except examining a person, who has no personal knowledge, has not placed any other material, therefore objection of insurance company with regard to relationship of employee and employer is not at all tenable.

9. Considering the material on record, I am of the view that there are no grounds to interfere with the compensation granted by lower authority and that the appeal is devoid of merits and is liable to be dismissed.

10. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 19-04-2016.

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