

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Miscellaneous Appeal No.178 OF 2003
and
Civil Miscellaneous Appeal No.1582 OF 2003

COMMON JUDGMENT:

C.M.A. No.178 of 2003 is preferred by the Opposite Party No.2 in W.C. No.3 of 2000, before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-II, Guntur, challenging the order dated 5.11.2001 whereby and whereunder liability was thrust on the Insurer, the appellant herein, while awarding compensation of Rs.27,754/- for the injuries sustained by the applicant, engaged by the Opposite Party No.1 in W.C. No.3 of 2000 for one day in place of a regular driver when lending his vehicle to one of his friends, Subrahmanyam, by the Opposite Party No.1, but the Commissioner sidelining completely the plea taken by the very owner in his counter and also the assertion made by P.W.2 in his evidence and answering in his cross-examination when the learned Standing Counsel for the Opposite Party No.2 cross-examined, fixed the liability which is patently wrong.

2. Heard Sri Ravi Shanker Jandhyala, learned Standing Counsel for the appellant. Today, no representation for the 1st respondent though, the list was printed in advance and again re-notified to take up today.

3. Perused the records, including the counter filed by the owner of the vehicle, Opposite Party No.1, in W.C. No.3 of 2000 which shows that the owner has specifically averred in paragraph-2 that one of his friends i.e., Subrahmanyam insisted him to arrange his vehicle to go to Tirupati, upon which he engaged applicant/petitioner only for that purpose and applicant has agreed for the said condition and stood as opting driver. The same was asserted by him even in his chief-examination before the Commissioner as R.W.2. When the applicant is not under permanent employment of Opposite Party No.1, certainly, it is to be viewed that Opposite Party No.1 breached the conditions and no liability can be fastened on the Insurer and only in case, the applicant is a Regular driver and there existed the relationship of 'employee and employer', certainly, Insurer cannot be exonerated, but such is not a situation occurring in the present case. The Commissioner, somehow, did not appreciate the said aspect, ignoring the specific averment in the counter filed by the Opposite Party No.1 and assertion thereto in his evidence as R.W.2 and, therefore, the said approach would amount to deviation in appreciation of evidence in accordance with the evidentiary rule thereby accounting for a legal infirmity in the finding recorded by the Commissioner therefor warranting interference.

4. Hence, the order dated 5.11.2001 is set aside and C.M.A. No.178 of 2003 is allowed exonerating the appellant from its liability, fixed by the Commissioner in W.C. No.3 of 2000.

5. Turning to C.M.A. No.1582 of 2003, since there is no representation for the appellant, who is no other than the applicant in W.C. No.3 of 2000, the same is dismissed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the both the Civil Miscellaneous Appeals shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 07.09.2017
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