

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU
CIVIL MISCELLANEOUS APPEAL No.647 of 2007

JUDGMENT

This appeal filed by the appellant/opposite party against the order in W.C No.20 of 2006 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Khammam.

The case is filed by Smt. Pampana Savithri and her son Pampana Venkanna against Sri Seetha Ramachandhra Swamivari Devasthanam, Bhadrachalam represented by its Executive Officer.

The case of the applicants is that one P.Laxmi who is daughter of the first applicant was working in the opposite party-Devasthanam. It is stated that on 19.9.2003, the deceased along with other coolies went to Nitya Anna Prasad Sadanam for clearing the mud. There she suffered electrocution and died soon thereafter in the hospital. The applicants state that on the date of the accident, the deceased was working with the opposite party-Devasthanam. Therefore, they claim compensation.

The opposite party-Devasthanam filed a counter denying strongly that the deceased P.Laxmi was employed with them or that she was paid Rs.80/- as wages. The case of the opposite party is that she was relative of one employee and that she

visited the kitchen for securing prasadam and went further into the premises of the Devasthanam where she got electrocuted.

On behalf of the applicants, two witnesses were examined and on behalf of the opposite party/respondents, two witnesses were examined. Exhibits A1 to A4 were marked for the applicants. The Commissioner, after considering the evidence before him, passed the impugned order holding that there is employer employee relationship. He directed the opposite party to pay compensation along with interest. It is this order that is now assailed in this appeal.

I have heard Sri Ch.Satish Kumar, Counsel for the appellant and Sri P.V.Ramana for respondents.

The first and foremost point that has to be decided in this case is whether employer or employee relationship is made out in the facts and circumstances of this case. The employer/appellant has strongly denied that there is employer employee relationship. It is incumbent upon the respondents to prove that the deceased was in-fact working with the appellant as this is a *sine qua non* for the case to be filed. The appellant is a major temple under the endowments department which functions under the control of the State Government. Therefore, it is very easy for the respondents/applicants to prove the employment of the

deceased. If at all the deceased was working with the appellant, there would be some evidence to support the same. The appellant cannot spend money or hire people without some evidence being available. Despite the categorical denial by the appellant, the claimants did not prove that the deceased was working with the appellant. Neither PW.1 nor PW.2 could prove that the deceased was working with the appellant-Devasthanam. The appellant/opposite party examined the Superintendent working in the office along with Attender/Vanta Swamy. The second witness clearly says in his evidence that the deceased was not an employee and that she trespassed into the kitchen to obtain prasadam of the temple. In his cross-examination, he asserts that he is senior most member working in the kitchen and knows all the employees of the Devasthanam.

The respondents/applicants did not take any steps to summon any records from the appellant/opposite party. They did not file any document on their own. There is no single paper or any other evidence to show that the deceased was in fact working with the appellant/opposite party. In the absence of any such evidence, the Court below committed an error in coming to a conclusion that the deceased was working with the appellant/opposite party. As mentioned earlier, this is not a case of employee in an unorganized sector. It is the case of an employee working under the Government

department/temple, which is a very large temple. In the absence of any evidence showing that the deceased was employed as coolie by the appellant/opposite party, there is no employer employee relationship between the deceased and the appellant/opposite party. It is a basic principle of law that burden of proof is on the person who alleges that a certain set of facts exist. Burden of proof, in this case, was on the respondents/applicants to prove that the deceased was employed with the appellant/opposite party. They have miserably failed to discharge this fundamental obligation.

Consequently, this Court is of the opinion that the lower court disregarded the pleadings and also evidence in this case.

The impugned order in W.C.No.20 of 2006 dated 28.6.2007 is, therefore, set aside. The appeal is allowed without costs.

Miscellaneous petitions pending, if any, in this appeal shall stand closed.

JUSTICE D.V.S.S.SOMAYAJULU

Date: /12/2017

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