

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

C.M.A.No.763 of 2006

JUDGMENT:

This appeal is filed by the United India Insurance Company Limited against the orders dated 24.03.2006 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Mahabubnagar in W.C.No.31 of 2002.

Smt. Boya Narasamma, wife of late K. Hanumanthu is the first claimant in W.C.No.31 of 2002. According to her, her husband was working with the first opposite party. As per the averments of the claim petition, the deceased was working as labourer with the first opposite party and was travelling on a tractor-cum-trailor belonging to the first opposite party. He met with an accident on 16.04.2002 and he died immediately. As per the case of the applicant, the deceased was travelling in the trailer for harvesting of the paddy along with other two labourers. As the death occurred in the course of employment, the claim for compensation of Rs.4,00,000/- was filed.

The first respondent/owner of the tractor filed counter and denied the allegations. Opposite party No.2, is an insurance company. They strongly contested the application and denied among other things, the existence of employer and employee relationship etc., between the deceased and first

opposite party and also stated that the policy in question does not cover the accident.

In a trial the first applicant was examined as AW.1 and on behalf of opposite party No.2, one witness was examined. Exs.A.1 to A.5 were marked for the applicant and Ex.B.1 insurance policy was marked for the second opposite party.

After considering the evidence on record, the Commissioner came to a conclusion that the applicant was entitled to compensation and awarded a sum of Rs.1,98,226/-. It is this order that is assailed in the present appeal.

Heard Sri V. Sambasiva Rao, for the appellant/insurance company and Sri K. Venkatesh Gupta for respondents 1 to 3/claimants.

The first point urged is about the employer and employee relationship. The applicant relied upon the fact that first opposite party admitted that the deceased was working as labourer. The Commissioner also relied upon the copy of the FIR and charge sheet, which show that the applicant along with others was travelling in a tractor-cum-trailor, which met with an accident. It is stated in the FIR that the applicant, her husband and 20 others were travelling to Thimmapur to harvest the paddy. Even the charge sheet filed by the police shows that the accused was travelling along with other labourers on the date of the accident for agricultural operations. The deceased was sitting on a bag in

the tractor fell down when the tractor was driven in a rash and negligent manner and sustained grievous injuries, which resulted in his death. Therefore, there is evidence of the FIR, a contemporaneous document and cannot be negated totally. It cannot also be said that with an ulterior motive, the first claimant, who is the wife of the deceased labourer, lodged the FIR soon after of the death of her husband in the alleged accident. Therefore, the finding of the Commissioner for Workmen's Compensation that there is employer and employee relationship cannot be assailed. The Commissioner also noticed that the wages of the employee were not proved. Therefore, he rightly adopted the Minimum Wages Act that were payable and came to the conclusion about the damages. No fault can be found with the assessment of such damages also.

It is also argued by the learned counsel for the appellant/insurance company that the policy in question does not cover the present accident and that the insurance policy is a farmers package policy only and meant to cover agricultural operations. The copy of insurance policy shows that the limitations are as follows "for agricultural use only". As rightly noticed by the Commissioner, there is no material to show that the vehicle was used for non-agricultural purpose. The contemporaneous statement of the applicant in her FIR clearly shows that she was travelling as a coolie along with the deceased for the purpose of harvesting operations

only. Harvesting is clearly an agricultural operation. Therefore, the contention of the learned counsel for the appellant/insurance company on this ground is negated. Besides, first opposite party clearly admits in his cross-examination as follows:

“It is true that the risk of labourers are covered under the policy.”

For all the above reasons, this Court is of the opinion that there are no grounds made out to interfere with the impugned orders passed by the Commissioner.

Accordingly, the Civil Miscellaneous Appeal is dismissed and the impugned order dated 24.03.2016 of the Commissioner for Workmen's Compensation in W.C.No.31 of 2002 is hereby confirmed. However, there shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 10.11.2017
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