

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.3874 OF 2004

JUDGMENT:

The present appeal is preferred by Opposite Party No.2 - Oriental Insurance Company Limited, Anantapur, aggrieved over the order, dated 15.12.2003, awarding a compensation of Rs.53,537/- with interest at 9% per annum from the date of accident till the date of payment, besides stamp duty of Rs.107/- by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Kadapa (for short 'Commissioner').

2. Heard Sri Naresh Byrapaneni, learned standing counsel for the appellant - Opposite Party No.2. Both the respondents were served with notices, but the applicant, who is respondent No.1 herein, has not entered appearance, and none appears for respondent No.2 even.

3. The only submission of the learned standing counsel has been that the finding recorded by the Commissioner is palpably wrong and warrants interference as the reasoning adopted is contrary to what has been on record. It is according to the learned standing counsel that respondent No.1 - applicant was travelling as a passenger on a lorry sitting on the cement load, but he described himself as a coolie, which was accepted by the Commissioner in the face of contents of Exs.A-1, A-2 and A-4. The learned standing counsel has drawn the

attention of this Court to the documents, Exs.A-1, A-2 and A-4. They clearly and categorically show that the applicant along with some others were travelling by sitting on the cement load loaded in the lorry, and on account of rash and negligent driving of the lorry driver, the lorry turned turtle and they all fell down and sustained injuries. The Commissioner has not discussed the purport of each of these documents and simply referring to the description construing the applicant as one of the coolies who sustained injuries in the said accident, determined the compensation in accordance with the structural formula, which is patently wrong and, therefore, warrants interference.

4. When respondent No.1 - applicant is not construed as a coolie and he was only a passenger travelling on the lorry, certainly, the relationship of the employee and employer does not arise, which the Commissioner has completely ignored. Therefore, it is a fit case warranting interference and, accordingly, the finding recorded by the Commissioner is withheld setting aside the order under challenge against the appellant - opposite party No.2 by allowing the present appeal. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal shall stand closed.

A. SHANKAR NARAYANA, J

October 05, 2017
Mgr