

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Miscellaneous Appeal No.1156 of 2008

JUDGMENT:

The present Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 (for short, 'the Act'), aggrieved over the order, dated 16.8.2005, passed by the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour-I, Circle Guntur, awarding a sum of Rs.96,444/- taking the age of the applicant as 42 years for computation of the compensation by referring to Minimum wages fixed as per G.O.Ms.No.30, dated 27.7.2005, and the disability of 25% permanent and partial and worked out the compensation by taking the wage at Rs.2,587/- besides VDA of Rs.1,008/- as per the provisions of Workmen's Compensation (Amendment) Act, 2000, having found that the evidence of Doctor would disclose partial permanent disability, and, thus, awarded Rs.96,444/-, besides awarding Rs.193/- towards stamp duty.

2. The said order is under challenge by the Insurer on the ground that the petitioner did not possess valid driving licence on the date of incident and thus, conditions of policy were vitiated, as Opposite Party No.1, in violation of the conditions of the policy, has entrusted the vehicle to a person not holding driving licence. That has been the main stand taken by the learned Counsel, Smt. V. Padma, for Smt. S.A.V. Ratnam, learned Standing Counsel for the appellant-

Insurance Company, besides submitting that, in fact, the driver was worked only for 15 days as two drivers were employed for every fortnight.

3. There is no representation for the respondents.

4. The only point that arises for consideration is, whether the order passed under challenge cannot be sustained?

5. As could be seen from the order, despite taking such a plea by the Insurer, the Insurer had not examined any witness to prove that the applicant did not hold valid driving licence on the date of incident herein.

6. When a plea is put forth in the counter, it is for the applicant to affirm by adducing proof in accordance with evidentiary rule. In fact, Ex.A3-copy of Driving Licence is marked on behalf of the petitioner-applicant and there is, thus, no rebuttal evidence on behalf of the Opposite party/Insurer. In such an event, certainly, it cannot be said that there is merit in the present Civil Miscellaneous Appeal, and, accordingly, the same is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA

Dt. 07.06.2018
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