

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

CIVIL MISCELLANEOUS APPEAL No.611 OF 2009

JUDGMENT:

This appeal is filed by the Insurance Company against the order dated 31.05.2008 in W.C.No.16 of 2005 on the file of the Commissioner for Workmen's Compensation and the Deputy Commissioner of Labour, Kadapa.

The case of the respondent/applicant is that he was working as a cooli under Opposite Party No.1, who is the owner of the tractor and trailer bearing registration Nos.AP04U 5396 and AP04U 5397 respectively, and Opposite Party No.2 is the insurer of the said vehicle. He further averred that the accident occurred out of and in the course of employment on 14.10.2004. The said application was filed in the Court below claiming compensation of Rs.2,00,000/-.

Opposite Party No.1 remained *ex parte* before the learned Commissioner. Opposite Party No.2 filed a counter denying, among other things, about the employer and employee relationship and clearly pleading therein that as per the records produced by the applicant himself, he was in fact working under third party. After the pleadings were filed, the parties adduced evidence, wherein on behalf of the applicant, A.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. Opposite Party No.1 remained *ex parte* and Opposite Party No.2 did not adduce any evidence.

Based on the evidence adduced, the learned Commissioner came to a conclusion that a sum of Rs.1,06,301/- along with interest and costs is payable to the applicant jointly and severally

by the Opposite Parties. It is this order that is assailed in the appeal.

Heard both sides.

The essential question that arise for consideration is whether in the light of the specific denial in the counter that the applicant is not working under Opposite Party No.1, the applicant is able to prove the employer and employee relationship.

It is the submission of the learned counsel for the appellant that unless and until, employer and employee relationship is established, the application under the Workmen's compensation Act itself is not maintainable. He pointed out that in the very first line of his cross-examination, A.W.1 admits that he was working for a company called Balaji Biogas Thermal Factory, Chennur. However, in the next line, there is a denial of the same. Hence, the admission of A.W.1 is not very clear. In addition, he also drew the attention of the Court to the charge sheet that is filed and marked as Ex.A.2 in the case. The charge sheet clearly shows that A.W.1 Dalai Bujji, who is the applicant in the present case, is working in the Thermal Factory, Chennur, even the FIR (Ex.A1) is to a similar effect. Therefore, the very documents filed by the applicant shows that he was not under the employment of Opposite Party No.1 and was under the employment of a third party.

It is the contention of the learned counsel for the appellant-Insurance Company that there is no privity of contract between the applicant and the Insurer. In the absence of an employer and employee relationship between respondent No.2 and respondent No.1, learned counsel for the appellant contends no compensation can be awarded to respondent No.2 in this case. He argues that

unless this foundational fact is proved, the application itself is not maintainable.

This Court finds substantial force in the contention of the learned counsel for the appellant-Insurance Company. Admittedly, the applicant was working under a third party and not with Opposite Party No.1. Therefore, the impugned order of the learned Commissioner suffers from serious infirmity as he failed to notice the said fact which is very clear from the record. Hence, this Court finds that the impugned order is not sustainable.

In the result, the appeal is allowed setting aside the impugned order dated 31.05.2008 in W.C.No.16 of 2005 on the file of the Commissioner for Workmen's Compensation and the Deputy Commissioner of Labour, Kadapa. No costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

Date : 14.02.2018
ssp

D.V.S.S.SOMAYAJULU, J