

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

CMA No. 466 of 2006

J U D G M E N T :

This appeal is filed by the Insurance Company against the judgment and order dated 01.05.2006 in WC.No.174 of 2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad.

The case of the applicant was that he was employed as a labourer by first opposite party on the lorry bearing No.AP-13-T-2644 through the Driver. On 29.06.2004, an accident occurred whereby the applicant sustained serious injuries. Stating that the injuries occurred during the course of employment, he filed a case claiming compensation of Rs.2,50,000/- from both opposite parties 1 and 2. The first opposite party remind *ex parte* and the second opposite party denied the entire case that is set up by the applicant.

The applicant was examined as AW.1 and Exs.A.1 to A.8 were marked. AW.2 was the Doctor, who issued the medical certificate. RW.1 is a Senior Divisional Manager of the second opposite party. He deposed that the insurance company is not liable to pay the compensation.

The lower Court, after assessing the oral and documentary evidence; the legal position on this subject, came to a conclusion that the opposite parties 1 and 2 are

jointly and severally liable to pay a sum of Rs.2,52,616/-. It is this order that is assailed in the appeal.

This Court heard Sri Naresh Byrapaneni, learned counsel for the appellant and Sri B.Parameswara Rao, learned counsel for the respondents.

The two essential points that were strongly canvassed by the learned counsel appearing for the appellant is that the injured was not a “workman”. According to him, the appellant was picked up from the road by the Driver of the lorry and both of them went to commit theft of iron rods and therefore, he states that there is no employer/employee relationship between the first opposite party and the applicant. He also argued that the policy does not cover the labourers engaged in the lorry.

On the other hand, learned counsel for the respondent argued that the order is a very reasoned order, which in fact considered all the factual and legal submissions that are made in the case. The learned counsel took pains to point out that case law was also analyzed in detail before the lower Court came to a conclusion that it did.

This Court has also perused the order of the lower Court and has heard the submissions of the learned counsel appearing for the insurance company.

It is a fact that there is a dichotomy between the versions mentioned in the FIR/application and what is deposed on oath by AW.1.

In the FIR, as the learned counsel points out that it is mentioned that the applicant was picked on 29.06.2004 and both of them went to “load iron angulars”. At that point of time, when a watchman shouted, the Driver drove the lorry in a rash and negligent manner and ran over the leg of the applicant. Therefore, the learned counsel for the appellant argues that a reading of the contents of the FIR would show that both the Driver of the lorry and the applicant went to commit theft. His contention, therefore, is that there is no employment at all and this applicant was on board the lorry as a part of a plan to commit theft. While it is true, there is some amount of inconsistency in the FIR on which the learned counsel for the appellant relies; it shows that only a case under Section 337 IPC was booked, which is for causing hurt. There is no case of theft registered as replied by the respondents counsel. In the cross-examination of AW.1 also it was suggested that the applicant was arrested by the police for theft on 27.06.2004 at 7.00 p.m. etc. The learned counsel for respondents pointed out that if at all a theft was attempted or was committed, there would be record to show the same. Nobody from the police department was examined nor were any documents summoned to prove that theft was in fact committed or attempted to be committed. Therefore, he

states that there is no evidence available to show that the applicant was committing theft or attempting to commit theft.

This Court also finds considerable force in the submissions made by the learned counsel. The insurance company could have introduced positive evidence and it could have produced documents to show that a case of theft was in fact registered etc. They could have cross-examined the witness in greater detail also but they did not.

In the absence of any such evidence, this Court cannot dismiss the entire application on the ground that the applicant was attempting to commit theft. It is also important to note that the first opposite party, who is the owner of the lorry never contested the case. He would have been the right person to argue that the applicant was never engaged as a workman. In his absence and in the absence of any positive evidence to show that the applicant was committing theft, this Court cannot come to a conclusion that the applicant was not injured in the course of his employment and that he did not sustain any injury arising out of and in the course of employment.

On the issues of age, wages etc., not much argument was advanced and this Court, on an examination of the lower Court record, finds that the lower Court went by settled principles of law. No ground is made out to interfere with the same.

The last ground urged is that Ex.B.1 policy does not cover the applicant and the premium is only paid for two employees. The lower Court correctly held based on earlier law on this subject that since the policy covers two employees; the insurance company is liable to pay the compensation along with the owner of the vehicle-first opposite party for the injuries to the applicant. This Court does not find any reason to interfere with the order passed on this issue.

For all these reasons, this Court holds that the impugned order is a reasoned, well thought out order. All the points urged are considered before the impugned order was passed. No grounds are made out to interfere with the same.

In the result, the appeal is dismissed. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 07.02.2018
KLP