

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

CMA No. 409 of 2007

J U D G M E N T :

This is an appeal filed by the Insurance Company against the order dated 14.09.2006 in WC.No.31 of 2005 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar.

The application was filed by Koppula Basvaiah and his wife claiming compensation for the death of their son, who died in an accident arising out of and in the course of his employment on 30.03.2005. It is their case that while their son was driving the tractor and trailer belonging to the first opposite party, an accident occurred and their son sustained grievous injuries, which resulted in his death.

The first opposite party was set *ex parte*. The second opposite party, which is the insurer of the vehicle, denied the entire case that was set up. On behalf of the applicants, AW.1 was examined and Exs.A.1 to A.9 were marked. For the respondents, no oral evidence was introduced, but Ex.D.1-copy of insurance policy was marked.

After the trial, the Commissioner for Workmen's Compensation passed an award in favour of the applicants and against the respondents directing them to pay Rs.3,27,869/- jointly and severally. It is this order that is now assailed in the present appeal.

Heard Smt.A.Jayanthi, learned counsel for the appellant and Sri A.K.Jayaprakash Rao, learned counsel for the respondents.

The essential points that are urged in the appeal are that the wages of the deceased was taken as Rs.2,934/- without any proof of employment and that the accident occurred due to a mechanical defect and as such it is the first opposite party, who is liable as the vehicle was not in a roadworthy condition. This is said to be a breach of the policy condition. The learned counsel for the appellant also argued that the employer/employee relationship and the wages are not correctly proved.

The respondents on the other hand stated that a reading of the documents Exs.A.1 to A.5 would clearly establish that the deceased died due to the injuries sustained in an accident on 30.03.2005. A reading of the FIR, inquest and postmortem etc., makes it clear that the deceased met with an accident and he died because of the accident only. There is no evidence to the contrary to disprove the contents of these documents, as per the learned counsel.

This Court also agrees with the findings of the Commissioner on this issue and notices that there is no evidence to disprove the contents of these exhibits.

As far as the wages are concerned, it is a fact that no separate evidence has been filed, but as per the settled law on the subject, the Commissioner for Workmen's Compensation

relied upon the G.Os and came to the conclusion that the total wages payable were Rs.2,934/- as per the relevant Government Orders. This Court upholds the procedure adopted by the Commissioner as it is in line with the settled law on the subject.

As far as the question of mechanical failure and the vehicle not being roadworthy is concerned, the learned counsel for the respondents points out that there is no effective cross-examination on these aspects. Learned counsel also pointed out that the burden was on the appellant to prove that the vehicle was not roadworthy. No evidence is forthcoming from the appellant's side and in fact, other than filing Ex.D.1 insurance policy, no attempt was made to prove the lack of roadworthiness of the vehicle involved in the accident.

The learned counsel for the respondents is right in stating that in the absence of an adequate foundation in the pleadings and evidence, the respondents cannot argue that the vehicle was not in a roadworthy condition.

This Court, therefore, holds that the findings of the lower Court on all the issues are correct. There are no grounds made out to interfere with the findings of the lower Court. The impugned order is a reasoned and well thought out order, which is pronounced after considering all the submissions made. Therefore, this Court came to a conclusion that the appeal is to be dismissed.

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: 09.02.2018
KLP

