

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

CMA.No.1027 of 2008

J U D G M E N T:

This appeal is filed by the New India Assurance Company Ltd., against the judgment and order dated 01.08.2006 in WC.No.173 of 2004 by the Commissioner of Workmen's Compensation and Assistant Commissioner of Labour-I, Hyderabad.

The case of the applicant is that he was a labourer in an Auto bearing No. AP 29 T 2644. On 29.05.2004, the Auto went with a load of cement and after unloading the same when it was returning, it met with an accident. The applicant was injured in the accident. Claiming compensation for the injuries sustained, he filed a case before the Commissioner. The first opposite party did not appear and was set *ex parte*. The second opposite party denied all the averments made in the application. The parties went to trial and for the applicant, one witness was examined and Exs.A.1 to A.14 were marked. The Doctor, who examined the applicant, was examined as AW.2. For the respondents, RW.1 was examined and Ex.D.1 copy of insurance policy was marked.

Based on this evidence and the pleadings, the Commissioner passed an award directing opposite parties 1

and 2 to pay Rs.85,644/- with interest. This order is now assailed in this appeal.

This Court has heard Sri Narsi Reddy Teegala, learned counsel for the appellant and Sri Subbagari Sudarshan Reddy, learned counsel for respondent No.1 and Sri M.Pratap Singh, learned counsel for respondent No.2.

The three essential grounds that are urged by the appellant are that there is no employer/employee relationship, no premium was paid to cover the injury to the applicant in this case and that there is delay in lodging of the FIR.

Learned counsel for the appellant argued vehemently that the accident occurred on 29.05.2004, whereas the FIR was lodged on 07.06.2004 clearly indicating that it was a cooked up FIR created for the purpose of this case alone. Therefore, learned counsel argued that no reliance can be placed on the FIR and that with a view to defraud the insurance company, this case is filed. In reply thereto, learned counsel for the respondents pointed out that the delay in filing FIR was not raised as a ground either in the lower Court or during the course of the cross-examination of AW.1. He, therefore, argued that in the absence of any pleading or a finding of the lower Court, the applicants cannot urge this point in the appeal. He argued that this is a question of fact and not a question of law that can be raised

at any point of time. This Court finds substantial force in this contention. Mere delay in lodging an FIR is not a ground to reject the entire case more so in the absence of a specific pleading in the counter and in the cross examination also.

Learned counsel also argued that no specific premium was paid under the policy in question to cover the accident to a hamali or a coolie like the applicant in this case. Therefore, in the absence of any coverage, the insurance company cannot be made liable. In reply thereto, learned counsel for the respondents argued that the schedule of premium in Ex.D.1 insurance policy clearly shows that premium was collected for the owner, driver and a further sum of Rs.25/- was collected as premium to cover one employee under the Workmen's Compensation Act. Learned counsel also refers to the cross-examination of RW.1, wherein in the first line itself he admits that the policy issued by the appellant covers one employee. Witness, however, added employee means driver, but latter he clarified that the insurance company collected premium for personal accident benefit to owner cum driver.

This Court also observes that in addition to collecting Rs.100/- to cover the owner/driver, the appellant collected Rs.25/- to cover any accident to one employee. Therefore, this Court holds that the applicant/workman is covered by the policy in question.

As far as the employer/employee relationship is concerned, this Court holds that the affidavit of AW.1 along with FIR and other documents clearly show that the accident occurred on 29.05.2004 and Auto No.AP 29 T 2644 is involved in the accident. First opposite party has also remained *ex parte*. Therefore, in the light of all of these documents which are immediate and contemporary, as also the evidence on record, this Court holds that the existence of employer/employee relationship has been adequately proved in this case.

For all the above reasons, this Court holds that there are no merits in the appeal. Consequently, 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: 06.04.2018

KLP