

THE HON'BLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS APPEAL No.1450 of 2008

JUDGMENT:

1. The present Civil Miscellaneous Appeal has been directed against the Order dated 13.03.2006 in W.C.No.40 of 2004 on the file of the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar, where under the claim of respondent Nos.1 to 4 seeking compensation for the death of one Padakanti Narsimulu in the accident that occurred on 20.01.2004 was partly allowed, granting compensation of Rs.2,54,800/- to the dependants of the deceased workman. Aggrieved by the same, the present Appeal is filed by the New India Assurance Company Limited, who is the appellant.
2. Heard learned counsel for the appellant. There is no representation from the respondents.
3. Learned counsel for the appellant contended that the Commissioner has not appreciated the evidence of the appellant properly more particularly the evidence of RW2 and Exs.D1 and D3, which clearly demonstrates that the deceased was not an employee of the owner of the Tractor and Trailer which was insured with the appellant. He is only a passenger. The

Commissioner ought not to have held that there was employer and employee relationship between the owner of the subject vehicle and the deceased and such findings of the Commissioner suffer from perversity. Hence, prayed to dismiss the Appeal.

4. A close reading of Ex A1, First Information Report and Ex A6, charge sheet clearly demonstrates that the deceased was engaged as a labourer to load and unload on the tractor. Ex D1 shows that the vehicle hit the deceased as if he was a third party. Ex D3 shows that the deceased was a shepherd and he boarded the tractor in the midst of travelling and he is a stranger. Ex D3 was executed by opposite party No.1. It is not known under what circumstances, this document was executed and how it came into the hands of the appellant. The opposite party No.1, who was the executant of such a document was examined as RW3. His evidence shows that the deceased was engaged as a labourer and this document was not confronted. The evidence of RW3 is contrary to the contents of Ex D3. The genesis of Ex D1 and D3 is under suspicion.

5. Further the insurance company also relied upon the evidence of RW2 who was shown as one of the witnesses to the incident. According to him, the deceased was not a labourer and

he boarded the vehicle in the midst of journey. In the investigation, his evidence is not what he stated before the Commissioner. Such a previous statement was not produced. It appears such eye witness was managed. When the owner of the Tractor admits the employment of the deceased workman, the insurance company cannot go against such evidence. The police investigation also supports the engagement of deceased as a labourer. The Commissioner, relying on such evidence rightly appreciated the evidence on record and allowed the case. The said findings of the Commissioner, do not suffer from any perversity. The Appeal is devoid of merit and liable to be dismissed.

6. Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the Order dated 13.03.2006 in W.C.No.40 of 2004 passed by Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar. No costs.

Miscellaneous Petitions, pending if any, shall stand closed.

JUSTICE M.LAXMAN

10.01.2023
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Dated: 10.01.2023

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