HON'BLE SRI JUSTICE M.VENKATA RAMANA

CIVIL MISCELLANEOUS APPEAL No.59 OF 2019

JUDGMENT:

This Civil Miscellaneous Appeal is directed against the order in W.C.No.15 of 2011 dated 20.06.2016 of the learned Deputy Commissioner of Labour, Visakhapatnam-cum-the Authority under the Workmen's Compensation Act. The 2nd respondent (2nd opposite party) insurer has preferred this appeal.

2. The 1st respondent presented a claim before the Authority under Workmen's Compensation Act, Visakhapatnam i.e. Deputy Commissioner to award Rs.1,00,0000/- as compensation payable by the appellant and the 2nd respondent. He alleged that on 08.10.2008 at 8.00 a.m. at RVR Crusher, when he was trying to stop the engine of a lorry AP 35 U/2819 belonging to the 2nd respondent, he suffered an electric shock since the main frame of the lorry came into contact with live electric wire and consequent burns. He further claimed that initially he was admitted in Annapoorna Baby Care and General Hospital at Anakapalli and later, he was taken to Dr.A.Gopi Krishna, an orthopaedic surgeon, for treatment. He also claimed that in the course of such treatment, index finger of his right hand was amputated. According to him, he suffered a partial and permanent disability at 15% and that this accident occurred in the course of employment, when he was working for the 2nd respondent on his lorry AP 35 U/2819.

3. This lorry was insured by the date of the above alleged incident with the appellant. Thus, he claimed that both the appellant and the 2nd respondent are jointly and severally liable to satisfy his claim.

4. The 2nd respondent and the appellant resisted the claim of the 1st respondent denying the very accident. The 2nd respondent further contended that the 1st respondent was never under his employment nor a driver of his lorry AP 35 U/2819. He further claimed that one Sri Dandu Krishnamaraju, Son of Sri Subbaraju was the driver of this lorry. He also denied the alleged accident was due to electrocution of his lorry and thus, denied his liability.

5. The appellant apart from relying on the defence set up by the 2nd respondent also questioned the quantum of compensation sought by the 1st respondent disputing his age, wages, occupation and employer and employee relationship between both the respondents as well as nature of treatment he had and including the extent of the alleged disability.

6. In the course of enquiry before the Deputy Commissioner, the 1st respondent examined himself as A.W.1 and the orthopaedic surgeon, who issued Ex.A4-disability certificate, as A.W.2 while relying on Ex.A1 to Ex.A5.

7. On behalf of the 2nd respondent, he examined himself as R.W.1. While on behalf of the appellant, two of its officers were examined as R.W.2 and R.W.4. While R.W.3 was then Sub Inspector of Police, Anakapalli Rural P.S., who deposed with reference to issuance of Ex.A1-certificate on the complaint in Ex.A2 of the 1st respondent, with reference to the alleged incident.

8. Basing on the pleadings and the material placed in the course of enquiry by the parties, the Deputy Commissioner considered the following issues for determination:

"1. Whether there exists the employer and employee relationship between the opposite party-1 and the injured workman? If such relation exists, whether the injuries sustained due to the accident occurred during the course and arising out of his employment or not?

2. At what quantum the percentage of disability assessed?

3. What was the age and wage of the injured person at the time of accident?

4. If so what amount of compensation, the appellants are entitled to receive and who has to pay?"

9. The Deputy Commissioner held that there subsisted the employee and employee relationship between the 2nd respondent and the 1st respondent at the time of the alleged accident answering issue No.1 in favour of the 1st respondent. Holding issues 2 to 4 in favour of the 1st respondent basing on the evidence of A.W.2-Dr. A. Gopala Krishna accepting the disability at 15%, suffered by the 1st respondent due to the injury received in the alleged accident, considering his age at 49 years, basing on the minimum wages fixed for injured workman viz., driver in Public Transport Undertakings, monthly emoluments was fixed at Rs.4881/- as on the date of the accident, while limiting the same Rs.4,000/- being admissible amount for the purpose of compensation. Thus, the compensation was fixed at Rs.56,329/- and it was ordered to be paid by the appellant as well as the 2nd respondent being jointly and severally liable.

10. Pursuant to the above order, it is now informed in this appeal that the appellant had deposited Rs.1,10,905/-.

11. Both the respondents are not represented by any of the Advocate, even though they are served notices in this case.

12. Sri Naresh Byrapuneni, learned counsel for the appellant, contended that there is absolutely no proof relating to employer and

employee relationship between the respondents 1 and 2 respectively. The learned counsel further contended that there is clear evidence of the 2nd respondent on record, whereby he denied such relationship and in the absence of any material to prove the same, the learned Deputy Commissioner is not right in accepting the claim of the 1st respondent as an employee of the 2nd respondent. Learned counsel further contended while also disputing the quantum of compensation so awarded on the premise that there is absolutely no evidence worth acceptance in terms of Section 3 of the workmen Compensation Act. Referring to substantive questions of law liable to be determined in this appeal, learned counsel requests to allow the same.

13. The following are the substantive questions of law are raised in the grounds of appeal:

1) Whether the order of the Commissioner is correct is making the appellant liable to pay compensation when there was no Employer-Employee relationship between the 2nd and 1st respondents, as required under law and the risk of the 1st respondent was not covered under the policy of insurance?
2) Whether the order of the Commissioner is correct in making the appellant liable to pay compensation when there was no accident to the vehicle and the 1st respondent was not an employee on the insured vehicle?

Question No.1:-

14. According to the 1st respondent, the alleged accident occurred on 08.10.2008 at about 8.00 a.m. at RVR Crusher, when a lorry AP 35U/2819 belonging to the 2nd respondent was electrocuted and that when the 1st respondent was working on the lorry as its driver, he suffered electric shock and consequent burns. Thus, this alleged incident is the basis for the present claim of the 1st respondent.

15. The 2nd respondent is not disputing he being the owner of the lorry AP 35U/2819. It is also not disputed in this case that this lorry was insured with the appellant by the date of the alleged incident and the contract of insurance was in force by then.

16. The initial burden is on the 1st respondent to prove that there existed the relationship between him and the 2nd respondent as an employee and employer respectively. It should be supported by means of documentary evidence and mere oral assertions of the 1st respondent cannot be held sufficient for the purpose. Admittedly, the 1st respondent did not produce any documentary proof to prove such relationship between him and the 2nd respondent. In the course of enquiry before the Deputy Commissioner, he clearly stated that he did not file any certificate to prove such relationship between him and the 2nd respondent nor any appointment letter nor salary certificate was produced. Of course, he denied suggestions of the 2nd respondent and on behalf of the appellant that he was never the driver of the lorry of the 2nd respondent and further denied that no incident occurred as claimed by him involving the lorry of the 2nd respondent.

17. The 1st respondent did not choose to present any complaint to the police immediately after the alleged date of incident viz., 08.10.2008. It appears, as could be culled out from the evidence of R.W.3, then S.I. of Police, Anakapalli Rural P.S., and Ex.A1 as well as Ex.A2. A complaint in Ex.A2 was preferred on 08.11.2008 in respect of the alleged incident in Anakapalli Rural Police Station. Thus, after a month of the alleged incident, such a complaint was presented. It is also part of material on record that no charge sheet pursuant to such complaint was filed in any court against any one after due investigation. The complaint was

preferred as per the material on record, after the 1st respondent had his treatment and after securing medical attention apparently, he presented a complaint. It is the version of R.W.3, then S.I. of Police, Anakapalli Rural P.S., that Ex.A2 complaint did not reflect any lorry number. His evidence further reflects that no FIR was registered basing on Ex.A2 complaint and Ex.A1 certificate was issued for the purpose. This certificate did not refer the name of the owner of the lorry and was issued after more than three months of the alleged incident. According to the appellant, Ex.A1 and Ex.A2 are nothing but fabrications, brought out by the 1st respondent to support his false claim.

18. When the burden is on the 1st respondent to prove that he was an employee of the 2nd respondent at the time of the alleged incident, in the absence of any other material, basing on Ex.A1 certificate drawing conclusions, as was done by the Deputy Commissioner in favour of the 1st respondent, is not proper.

19. The 2nd respondent as R.W.1 clearly denied any relationship between him and the 1st respondent as the employer and employee while further denying that the 1st respondent was his driver on the date of the alleged incident. Thus in the presence of such testimony from the 2nd respondent and in the absence of any material produced by the 1st respondent to prove the employer and employee relationship between him and the 2nd respondent, it is rather difficult to subscribe to the view of the Deputy Commissioner nor support his finding on issue No.1. Merely because Ex.A1 and Ex.A2 were issued by the police, they cannot be the satisfactory material in the facts and circumstances of the case.

20. Another circumstance apparently relied on for the 1st respondent to prove his claim and involvement of the lorry belonging to the 2nd respondent, is a reference to it in Ex.A3-medical certificate. This circumstance, cannot have any bearing in this case and it cannot be the material to satisfy the effect of Section 3 of Workmen's Compensation Act.

21. Therefore, on the material, the inference to draw is that the 1st respondent failed to establish that there was relationship of employer and employee between himself and the 2nd respondent on the date of the alleged incident. There is no proof that there was an incident on 08.10.2008 of electrocution muchless of involvement of the 1st respondent in it. Therefore, the claim so made by the 1st respondent as an employee of the 2nd respondent or with reference to the alleged incident of electrocution stands rejected nor the appellant stands itself liable to satisfy the claim of the 1st respondent nor such liability be fastened on the 2nd respondent. Thus holding, the finding recorded on issue No.1 by the Deputy Commissioner has to be set aside. Thus, this question is answered.

Question No.2:-

22. A.W.2 is the Orthopaedic Surgeon, who had examined the 1st respondent and had issued a disability certificate of 24.11.2008 declaring the disability at 15%. He deposed as to such facts. The amputation was done to the right index finger at the base, according to A.W.2. This orthopaedic surgeon did not have personal knowledge of the alleged incident in which the 1st respondent suffered such an injury. He was not the doctor who treated the 1st respondent for such an injury. No reason is presented by the 1st respondent why he did not approach the Medical

Board of the District for the purpose of fixing extent of disability suffered by him. Therefore, the evidence of A.W.2 cannot have any bearing in this matter. There is no proof as such with reference to Ex.A3, since none concerned to the above document was examined. The quantum so arrived at by the learned Deputy Commissioner was entirely based on the testimony of A.W.2. However, in view of the findings on question No.1 recorded above, the quantum of compensation arrived at by the learned Deputy Commissioner has lost its significance. Thus, this question is answered.

23. Therefore, on consideration of the material and upon re-appraisal of the evidence on record, the inference to draw is that the claim of the 1st respondent could not have been maintained and passing such an award by the Deputy Commissioner is improper and without any basis. The claim of the 1st petitioner should have been dismissed exonerating the liability of the appellant as well as the 2nd respondent.

24. In the result, this CMA is allowed. Consequently, the order of the Authority under Workmen's Compensation Act-cum-Deputy Commissioner of Labour dated 20.06.2016 in W.C.No.15 of 2011 is set aside. There shall be no order as to costs. The appellant is entitled for refund of the amount already deposited before the Authority under Workmen's Compensation Act-cum-Deputy Commissioner of Labour, Visakhapatnam.

All pending miscellaneous petitions, if any, shall stand closed. Interim orders, if any, granted earlier stands vacated.

JUSTICE M.VENKATA RAMANA

Dt:31.08.2020
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HON'BLE SRI JUSTICE M.VENKATA RAMANA

CMA No.59 of 2019

Dt:31.08.2020

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