
(2004) 11 AP CK 0028
In the Andhra Pradesh High Court
Case No : C.M.A. No. 1178 of 2002

Akula Suryanarayana @ Suribabu

APPELLANT

Vs

Peddiboina Venkata Mohan @ Mohanarao and Others

RESPONDENT

Date of Decision : 09-11-2004

Acts Referred:

Citation : (2005) 2 ACC 873 : (2006) ACJ 1526 : (2005) 3 ALT 33 : (2005) 2 ALT 33

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S. Subba Reddy, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The unsuccessful claimant in W.C. Case No. 7 of 1997, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, West Godavari at Eluru (for short "the Commissioner"), is the appellant in this C.M.A. He presented the claim before the Commissioner, alleging that he was employed as a helper in the saw-mill, owned by the respondents, and that on 01-03-1996, at about 8.30 a.m., his left hand went inside the machine, and was crushed. He stated that the first respondent admitted him in local private hospital and that his hand was amputated. He claimed compensation under the provisions of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act").

2. The respondents resisted the claim alleging that the appellant was not employed by them, and that they are not liable to pay any compensation. The appellant examined himself as A.W.1. The doctor, who treated him for the injury, was examined as A.W.2. Exs. A-1 to A-7 were marked on his behalf. The first respondent examined himself as R.W.1. The attendance register and pay register for the year 1996 were filed as Exs. R-1 and R-2. Through the order, dated 22-02-2002, the Commissioner held that the appellant was not employed by the respondents, and as such, they are not liable to pay compensation.

3. Sri S. Subba Reddy, learned counsel for the appellant submits that the appellant placed voluminous evidence before the Commissioner to prove that he was employed with the respondents and sustained injuries during the course of his employment. He submits that whatever may be the suspicion about the evidence of A.W.1, the evidence of A.W.2, an independent witness, ought to have been accepted by the Commissioner. He submits that Exs. R-1 and R-2 are nothing but self-serving documents and were not certified by any Government agency.

4. Though respondents 1 and 2 were served with notices, they have not chosen to enter appearance.

5. The appellant submitted the claim alleging that his hand was crushed in the saw-mill, during the course of employment. The respondents, who are the owners of the saw-mill pleaded that the appellant was not their employee. The claim was rejected by the Commissioner on the ground that he was not employed with the respondents.

6. To prove his case, the appellant examined himself as A.W.1 and examined A.W.2, the doctor, who treated him. He also filed Exs. A-1 to A-7. Exs. A-1 and A-2 are the medical certificates issued by A.W.2. Ex. A-3 is the disability certificate issued by District Headquarters Hospital, Eluru. The notices issued on behalf of the appellant to the respondents were marked as Exs. A-4 and A-5 and the respective acknowledgments are Exs. A-6 and A-7. The appellant stated in his evidence that he was employed with the respondents and had sustained injuries during the course of employment. His evidence in this regard cannot be accepted, unless it is corroborated.

7. A.W.2 is the doctor, who has treated him. He has categorically stated that the appellant was brought to him by the first respondent. He has narrated the particulars of the treatment accorded to the appellant. He stated that he knows the appellant and the respondents, since they belong to the same place. Nothing was elicited through him in the cross-examination, to suggest that he has any interest in the appellant. Having regard to the nature of employment and the object underlying the Act, the Commissioner ought to have accepted the evidence of A.W.2, who is an independent witness.

8. To contradict the version of the appellant, the first respondent filed Ex. R-1, wages Register from 01-01-1996 to 31-12-1996 and Ex. R-2, the Attendance Register; for the same period. These registers were not referred to, in the counter filed by him to the claim. The registers do not contain the signature of the person, who maintained it, much less that of any Government Officer, A perusal of the same discloses that the entries for 12 months were written, by the same person, at a time. One important aspect, which needs to be taken into account is that the first respondent, as R.W.1, admitted that he received a notice addressed by the appellant, and that he has not chosen to issue any reply. The answer given by him for not replying to the notice is vague and inconsistent. It is

not as if the appellant hailed from a different place and his whereabouts were not known. The appellant and the respondents hail from the same village. Having regard to the evidence on record, it can clearly be stated that the appellant was employed with the respondents. The Commissioner insisted on proof "beyond reasonable doubt", as to the existence of relationship of employer and employee. Proof of such a degree is required in criminal cases and not in those under social or beneficial legislations. His approach does not accord with the scheme of the Act.

8. For the foregoing reason, the C.M.A. is allowed and the Order under appeal is set aside. The matter is remanded to the Commissioner for determination of compensation, duly taking into account, the factors specified in the Act, after giving opportunity to both the parties. The claim shall be disposed of, within four months from the date of receipt of records. There shall be no Order as to costs.