
(2006) 11 AP CK 0037
In the Andhra Pradesh High Court
Case No : CMA No. 3254 of 2002

United India Insurance Co. Ltd.

APPELLANT

Vs

K. Anjaneyulu and Another

RESPONDENT

Date of Decision : 24-11-2006

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2007) 3 ALD 715 : (2007) 4 ALT 643 : (2007) 114 FLR 663

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : N.V. Jagannath, for the Appellant; N. Ashok Kumar and T. Ramulu, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—This appeal is presented, u/s 30 of the Workmen's Compensation Act, 1923 (for short "the Act"), by the insurer of a vehicle bearing No. AP 10T 3519, owned by the second respondent herein.

2. The first respondent filed W.C. No. 64 of 1999 before the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-IV, Hyderabad (for short "the Commissioner"), stating that he was employed by the second respondent, to work as a Driver on the vehicle, referred to above, at a monthly salary of Rs. 3,000/-. He stated that the said vehicle was engaged by a tourist agency and that on 17-5-1999, at about 2.30 p.m., while he was proceeding from Srisailam to Tirupathi, a bus bearing No. TN 01N 90062, came in a rash and negligent manner on the ghat road and hit the vehicle being driven by him. He is said to have received grievous injuries in the accident and was shifted to N.S.R.S.P. Project Hospital at Srisailam. Further treatment is alleged to have taken place in a private hospital at Hyderabad and Gandhi Hospital at Secunderabad. Stating that he became unfit to work as Driver, on account of the fracture injuries received to the right leg and right patella, the first respondent claimed a sum of Rs. 2,25,000/- as compensation.

3. The owner of the vehicle-second respondent remained ex parte. The claim was opposed by the appellant-Insurance Company alone. All the allegations made by the first respondent were denied. The age and extent of injuries said to have been received by the first respondent were disputed. The relationship of employee and employer between the first and second respondents was denied and the roadworthiness of the vehicle and the subsistence of driving licence were disputed.

4. Through an order, dated 25-5-2001, the Commissioner awarded a sum of Rs. 2,03,328/- as compensation under the Act. Hence, this appeal.

5. Sri N.V. Jagannath, the learned Counsel for the appellant-Insurance Company submits that even from the deposition of the first respondent as A.W.1, it was clear that he was employed with a travel agency and not with the second respondent and thereby, the liability to pay the compensation did not subsist. The learned Counsel submits that the Commissioner misread and misinterpreted the evidence and awarded the compensation against the appellant.

6. Sri N. Ashok Kumar, the learned Counsel for the first respondent submits that the pleading and evidence was consistent to the effect that his client was employed with the second respondent as driver, at the relevant point of time, and the mere fact that the vehicle was kept at the disposal of a tourist agency or that salary was paid to him by the agency, under the instructions of the second respondent, hardly makes any difference.

7. Sri T. Ramulu, the learned Counsel for the second respondent submits that admittedly, the vehicle is insured with the appellant and the fact remains that the first respondent sustained injuries, while driving the said vehicle. He contends that the finding recorded by the Commissioner that the first respondent was employed with the second respondent does not warrant interference.

8. The only point urged on behalf of the appellant is that the first respondent failed to prove that he was employed with the second respondent, as on the date of accident. The existence of insurance coverage by the appellant for the vehicle, the occurrence of the accident and the fact that the first respondent received injuries in the said accident, are not in serious dispute. The basis, on which, the appellant doubts the employment of the first respondent with the second respondent, is that no order of employment or other evidence emanating from the second respondent, was placed before the Commissioner. Another aspect urged by the appellant is that even according to the first respondent, the salary was paid to him under Ex.A.1, by a travel agency. The opening sentence of evidence of the first respondent as A.W.1 is relied upon heavily.

9. It has come in the evidence that the vehicle is owned by the second respondent and it was kept at the disposal of a travel agency, for hire purpose. It is not uncommon that the tourist agencies engage private vehicles and collect hire charges from the tourists and thereafter, pass on the amount to the owners of the vehicle, after deducting their commission. Where the vehicle is at the

disposal of the tourist agencies, for a longer time, the salaries to the drivers are also paid by them, from out of the hire charges, and the balance is passed on to the owners. The mere fact that a receipt, in proof of payment of salary to the first respondent, as a driver of the said vehicle, was issued by a tourist agency, hardly makes any difference. When the tourist agency was not the owner of the vehicle, there was no occasion for them to employ the first respondent as their driver, that too, to work on the vehicle owned by the second respondent.

10. The Act defines the term "workman" in very wide amplitude. Separate Clause is devoted to deal with the post of "driver". The Act does not mandate that an order of appointment must exist, to bring about such relation. On his part, the first respondent discharged his burden, by pleading the necessary facts and most of them were evident from the record. If the appellant was serious about the plea that the first respondent was not employed with the second respondent, nothing prevented it from summoning the latter and from eliciting necessary information. No effort was made, in this direction.

11. The first respondent was said to have been employed with the second respondent from about one year before the accident took place. The Commissioner recorded this statement by employing the word "one year earlier" instead of "one year back" or "one year ago". On the basis of this, the learned Counsel for the appellant makes an attempt to suggest that the first respondent left the employment of the second respondent one year prior to the accident and thereafter, he was employed by the tourist agency. Apart from being far-fetched, the interpretation does not fit into the facts. The reason is that admittedly, the first respondent continued to drive the vehicle owned by the second respondent.

12. The quantum of compensation was determined by the Commissioner, by applying the relevant factors, provided for under the Act. Viewed from any angle, this Court does not find any basis to interfere with the order under appeal.

13. Hence, the civil miscellaneous appeal is dismissed. There shall be no order as to costs.