



IN THE HIGH COURT OF ANDHRA PRADESH: AT AMARAVATI

CIVIL MISCELLANEOUS APPEAL No.1204 OF 2011

Between:-

POTHALA VENKATA RAMANA S/O GOWRIBABU
S/o Gowribabu, R/o Mahatma Colony, Gandhigram,
Marripalem P.O. Visakhapatnam.

...Appellant

AND

1.P SUBBI REDDY AND ANOTHER
S/o Appa Rao, Owner of Lorry AHQ 8469,
R/o D No 261436, Velampeta, Visakhapatnam.

2. United India Insurance Company Ltd
Rep by Divisional Manager Dabagardens Visakhapatnam.

...Respondents

DATE OF JUDGMENT PRONOUNCED: 10.05.2023

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes/No
2. Whether the copies of judgment may be marked to Law Reports/Journals? : Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : Yes/No

VENKATA JYOTHIRMAI PRATAPA, J



***HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

+ Civil Miscellaneous Appeal No.1204 of 2011

% DATE: 10.05.2023

Between

POTHALA VENKATA RAMANA S/O GOWRIBABU
S/o Gowribabu, R/o Mahatma Colony, Gandhigram,
Marripalem POM Visakhapatnam.

... Appellants

Vs.

1.P SUBBI REDDY AND ANOTHER
S/o Appa Rao, Owner of Lorry AHQ 8469,
R/o D No 261436, Velampeta, Visakhapatnam.

2. United India Insurance Company Ltd
Rep by Divisional Manager Dabagardens Visakhapatnam.

... Respondents

! Counsel for the petitioner : Sri G.Rama Gopal

^Counsel for respondents : Sri N.Rama Krishna

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➤ Head Note:

?CASES REFERRED : Nil



HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA
CIVIL MISCELLANEOUS APPEAL No.1204 OF 2011

JUDGMENT:-

This Civil Miscellaneous Appeal is preferred under Section 30(1) of Workmen's Compensation Act, 1923 (in short 'The Act') against the impugned order dated 19.08.1997 in W.C. No.98 of 1996 on the file of the Commissioner for Workmen's Compensation, Visakhapatnam (herein after be referred to as "Commissioner").

2. The appellant herein was the claimant and respondent Nos.1 and 2 herein were the Opposite Parties before the learned Commissioner.

For the sake of convenience, the parties hereinafter will be referred to as they arrayed before the learned Commissioner.

3. **The case of the appellant in brief is that;**

The claimant who is the injured filed the petition before the learned Commissioner seeking compensation



of Rs.1,00,000/- stating that, he worked as driver for the lorry bearing No.AHQ 8469 under Opposite Party No.1 and on 17.08.1995, while he was discharging his duty as a driver and when the lorry reached at Kinthali at Etcherla, Srikakulam, due to the collusion of lorry with a van going from opposite direction with a high speed, it dashed the lorry. In the accident, he sustained injuries to his both legs. Soon after the accident, he was shifted to Srikakulam Government Hospital, later shifted to K.G.H., Visakhapatnam for better treatment and took treatment for 4 ½ months as inpatient.

4. **Contention of the Opposite Parties:**

Opposite Party No.1 did not choose to appear and submit their objections on the claim.

Opposite Party No.2 being the insurance company filed counter denying the case of the claimant and put him to strict proof of employee employer relationship,



age, wage and the manner in which the accident occurred etc.

5. **Issues – Enquiry – Finding:**

(a) Basing on the rival pleadings of both parties, the learned Commissioner framed the following issues.

1. Whether the applicant is workman within the meaning of Workmen's Compensation Act ?
2. Whether the applicant sustained disability of 40% in the accident arising out and in the course of employment ?
3. If so, what is the relief to the applicant ?

(b) During the course of enquiry, the claimant himself was examined as AW.1. The Doctor who issued disability certificate is examined as AW.2. Exs.A1 to A5 were the documents marked in support of the claim. Opposite Party No.2 did not choose to adduce any evidence.

(c) After hearing both the counsel and on appreciation of the evidence on record, the learned Commissioner



opined that, since the FIR-Ex.A1 would not show the claimant was the driver of the lorry bearing No.AHQ 8469 at the time of alleged accident, applicant failed to examine any eye witness to show that he was the driver at the relevant point of time and Ex.A2 shows his condition was stable at the time of discharge, but thereafter he obtained disability certificate and held that applicant failed to prove that he was on duty as a driver and met with an accident. Accordingly, petition was dismissed.

6. **Grounds of Appeal**

Feeling aggrieved and dissatisfied with the order impugned, the claimant preferred the present appeal on the grounds that,

- i) The learned Commissioner failed to appreciate the evidence on record in right perspective.



ii) The evidence of claimant itself is sufficient to prove that he was the driver at the time of accident, and accident occurred during the course of employment.

iii) The order impugned is contrary to the scope and spirit of the Workmen's Compensation Act.

7. **Substantial Questions of Law:**

In memo of appeal, the substantial questions of law that would emerge for determination are as follows:

1. Whether the Commissioner is justified in dismissing the entire claim of the claimant?
2. *Whether the Commissioner is justified in observing that there is no corroborative evidence to that of evidence of PW.1 in as much as the contentions of the claimant are not even legally denied by adducing any evidence. So, no corroborative evidence is necessary to believe the version of the claimant?*
3. *Whether the claimant is workman and there is employee and employer relationship between the claimant and the 1st respondent ?*
4. *Whether the accident occurred during and in the course of employment?*



5. *Whether the appreciation and finding of the learned Commissioner are contrary to the scope and spirit of Workmen's Compensation Act, 1923?*

8. Heard Ms. M.Uma Devi, learned counsel representing on behalf of Sri G.Rama Gopal, learned counsel for the appellant and Sri N.Rama Krishna, learned counsel for the respondents.

9. **Point Nos.1 to 5:**

During the course of arguments, learned counsel for the appellant filed memo along with the charge sheet filed in C.C. No.316 of 1995 on the file of Judicial Magistrate of I Class, Srikakulam relating to Cr. No.129 of 1995 of Etcherla P.S. in connection with the accident in the present case. The copy of the charge sheet would clarify the doubts entertained by the learned Commissioner which leads the matter for dismissal of the claim petition. The charge sheet is vivid on the point that P.Venkata Ramana who is the claimant herein was the driver of the lorry bearing No.AHQ 8469



at the relevant point of time. The charge sheet further discloses the driving license of the driver also.

At this juncture, both the counsel would submit that the matter may be remanded to the learned Commissioner for reconsideration of the matter afresh. In the light of the copy of the charge sheet filed by the appellant in the appeal and as the matter requires reconsideration, it is appropriate to remand the matter to the learned Commissioner for disposal of the case afresh within a period of two months from the receipt of copy of the orders by giving opportunity to both parties to submit further arguments if any and pass orders.

10. In the result, appeal is allowed. Accordingly, order impugned is set aside. Matter is remanded to the learned Commissioner for fresh disposal of the matter by giving opportunity to both parties to submit further arguments if any and dispose of the matter on merits



within two (2) months from the date of receipt of copy of this order.

In the circumstances, both parties shall bear their own costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

VENKATA JYOTHIRMAI PRATAPA, J

Date : 10.05.2023

Note: L.R. Copy to be marked

B.O./PND