

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.3368 of 2004

-

Date:17.04.2015

Between:

Yempla Narsamma and another.

..... Appellants.

AND

The Divisional Manager, National
Insurance Company Ltd., VII Floor,
Moghul Courts, Basheerbagh,
Hyderabad-29.

.....Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.3368 of 2004

-

JUDGMENT:

This appeal is preferred against orders dated 17-12-2003 in W.C. Case No.13/2001 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda.

2. Brief facts leading to filing of this appeal are as follows:-

Appellants filed the above case claiming compensation of Rs.2,21,370/- contending that Yempala Madhusudhan Reddy worked as cleaner on lorry bearing No.AP 11U 4293 belonging to first respondent herein and he died in the accident while on duty. It is contended that deceased was drawing wages of Rs.2,000/- per month besides Rs.20/- per day as batta. The lower authority, during enquiry, examined one witness on behalf of the claimants and marked six documents and no witness is examined and no document is marked on behalf of the contesting respondents and on a over all consideration of oral and documentary evidence, granted Rs.1,69,785/- with interest at 9% per annum from 01-04-2003 till date of realization. Aggrieved by the said order, claimants preferred present appeal.

3. Heard both sides.

4. Advocate for appellants submitted that lower authority erred in granting interest only from 01-04-2003 though claimants are entitled from the date of application or accident as per the judgment of Hon'ble Supreme Court. It is further contended that the Court below ought to have taken wages of the deceased at Rs.2,000/- per month and daily batta of Rs.20/- as the evidence of A.W.1 with regard to wages remained unchallenged. It is further contended that lower

authority failed to take funeral expenses and for these reasons, the order of the lower authority has to be modified.

5. Advocate for Insurance Company supported the order of the lower authority and contended that there are no grounds to interfere with. It is submitted that interest was granted from 01-04-2003 on the ground that the relevant documents supporting the claim of appellants were filed only on 01-04-2003, therefore, there is nothing wrong in the order of the lower authority.

6. Now the point that would arise for my consideration in this appeal is whether the order dated 17-12-2003 in W.C. Case No.13/2001 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda is legal, proper and correct?

7. **Point:-** One of the grievance of the appellants is that lower authority has not granted funeral expenses, but as seen from the material, the applicants have not claimed any amount specifically towards funeral expenses, they have claimed a consolidated amount of Rs.2,27,330/- and the lower authority, considering the consolidated claim, granted a consolidated amount of Rs.1,69,785/-, therefore, the objection of the appellants with regard to separate funeral expenses cannot be sustained.

8. The next contention of the appellants is that the lower authority erred in taking Rs.1,500/- per month as wages of the deceased though he was getting Rs.2,000/- with daily batta of Rs.20/-. Advocate for appellants contended that A.W.1 deposed in her evidence specifying the wages that are drawn by deceased as cleaner and that evidence remained unchallenged as no one is examined on behalf of the Insurance Company, therefore, the order of the lower authority with regard to wages has to be modified. I have

perused the material including the evidence of A.W.1. There is no supporting evidence with regard to wages claimed by the appellants and it is only self-serving testimony of A.W.1. The lower authority has not accepted claim for wages on the ground that A.W.1 being claimant, interested therefore her self-serving testimony without corroboration cannot be accepted. Lower Authority has taken into consideration the minimum wages applicable to the cleaner as on the date of accident and on that basis, compensation is calculated. When there is no acceptable evidence supporting the wages claimed by the appellants, in my view, the lower authority was right in taking aid of the minimum wages fixed by the Government and therefore, the objection of the appellants is not tenable.

9. The other contention of the appellants is that lower authority granted interest only from 01-04-2003 though the application was filed on 10-11-1999. Advocate for appellants relied on a decision of Hon'ble Supreme Court in **Manju Sarkar and others vs. Mabish Miah and others**, wherein Hon'ble Supreme Court held that interest has to be granted from the date of claim petition. As seen from the record, lower authority has taken 01-04-2003 for the purpose of interest on the ground that the supporting documents were filed on that date though the claim application was filed on 10-11-1999. But the reasoning of the lower authority is not correct. When the office entertained application even without those documents, the filing date of application has to be taken for the purpose of interest. In view of the judgment of Hon'ble Supreme Court referred to above, the appellants are entitled for interest from the date of application, therefore, the order of the lower authority has to be modified to that extent.

10. For these reasons, appeal is partly allowed modifying the date from which the appellants are entitled for interest and the appellants are entitled for interest from 10-11-1999 instead of 01-04-2003 on the award amount and the respondent shall deposit the difference interest amount within 30 days from the date of receipt of this order.

No costs.

11. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:17.04.2015

mrh