

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.844 OF 2005

JUDGMENT:

This appeal is preferred under Section 30 of the Workmen's Compensation Act, 1923 (the Act), assailing the order dated 25.8.2004 in W.C. Case No.19 of 2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nellore.

2. For the sake of convenience, the parties to this appeal will be referred to as they are arrayed before the lower authority.

3. The facts leading to filing of the present appeal are briefly as follows: The applicant No.1 is the father and applicant No.2 is the mother of Koppolu Hajarath Reddy (hereinafter referred to as, the deceased). The deceased was engaged by the opposite party No.1 as a cleaner on the lorry bearing No.AP 26U 4590. The deceased died in a motor vehicle accident that occurred on 07.8.2003 out of and in course of his employment. By the time of the death, the deceased was aged about 30 years and used to earn Rs.3,000/- per month as lorry cleaner. The Station House Officer, Yerpedu Police Station registered a case in Crime No.57 of 2003 under Sections 304A, 337 and 279 IPC against the driver of the lorry bearing No.AP 26U 4590. Hence, the application is filed claiming a compensation of Rs.3,00,000/-.

4. The opposite party No.1 filed counter admitting the manner of the accident and the employer-employee relationship between him and the deceased. The lorry bearing No.AP 26U 4590 belongs to this opposite party was insured with opposite party No.2 at the relevant point of time; therefore, opposite party No.2 alone is liable to pay compensation, if any, to the applicants.

5. The opposite party No.2 filed counter denying the averments made in the petition including the manner of the accident, age and income of the deceased, *inter alia*, contending that the application is not maintainable under Section 22 of the W.C. Act as there was no relationship of employer and employee between opposite party No.1 and the deceased. The claimants are not entitled to claim compensation unless they prove that the driver of the lorry was having valid and effective driving

licence as on the date of the accident. The quantum of compensation claimed by the applicants is highly excessive and exorbitant. Hence, the application may be dismissed.

6. Basing on the above pleadings, the Tribunal framed two issues. During the course of trial, on behalf of the applicants, A.W.1 was examined and Exs.A1 to A5 were marked. On behalf of the opposite parties, no oral evidence was let in but Ex.B1 policy was marked on behalf of opposite party No.2.

7. On appraising the oral and documentary evidence available on record, the learned Commissioner arrived at a conclusion that there exists employer-employee relationship between opposite party No.1 and the deceased, and allowed the application by awarding a compensation of Rs.2,23,243/-. Feeling aggrieved by the award passed by the lower authority, the applicants preferred the present appeal.

8. The sole contention of the learned counsel for the applicants is that the lower authority committed error while not awarding interest at the rate of 9% per annum from the date of the accident till the date of deposit. *Per contra*, learned counsel for opposite party No.2 submitted that the applicants are not entitled for interest at 9% per annum from the date of the accident.

9. Basing on the rival contentions, the only point that arises for consideration in this appeal is:

Whether the learned Commissioner has committed error while not awarding interest at 9% per annum from the date of the accident till the date of the deposit?

Point:

10. Though the applicants have taken specific ground, in the grounds of appeal, that the amount of compensation granted by the lower authority is low, at the time of the arguments, learned counsel for the applicants submitted that the applicants are not disputing the quantum of compensation awarded by the lower authority. Further, the opposite party No.2 has not filed appeal challenging the quantum of compensation awarded by the learned Commissioner. Hence, I am not inclined to delve into the quantum of compensation awarded by the learned Commissioner.

11. The contention of the learned counsel for the applicants is that the learned Commissioner has not awarded interest at 9% per annum from the date of the

accident. The learned counsel for the opposite party No.2 submitted that the claimants are not entitled for interest from the date of the accident.

12. In the background of the same factual scenario, this Court, in *Vemula Venkata Rao @ Sreenu Vs. P.Sattar Khan* {CMA No.1088 of 2005 dated 17.07.2015}, by referring to the relevant provisions of the Act and by following various precedents of the Hon'ble Supreme Court as well as this Court in ***Pratap Narain Singh Deo v Srinivas Sabata, Oriental Insurance Co. Ltd v Siby George & Sons, National Insurance Co. Ltd., v Mubasir Ahmed, Oriental Insurance Co. Ltd., v Mohd. Nasir, Oriental Insurance Co. Ltd., v Bashaboina Bakkamma, Patalapati Venkatanarasayamma v Susarla Subbalaxmi, Maghar Singh v Jashwanth Singh and Midicharla Ramanamma v V.Naga Pratap*** held that the applicants are entitled to interest from the date of the accident till the date of realisation.

13. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited above, I am of the considered view that the applicants are entitled to interest at 9% per annum from the date of the accident till the date of deposit. Accordingly, the point is answered.

14. In the result, the appeal is partly allowed, awarding interest at 9% per annum from the date of the accident i.e., 07.8.2003 till the date of deposit excluding 30 days. The opposite party Nos.1 and 2 are jointly and severally liable to pay the compensation with interest at 9% per annum accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 05.10.2015.

YS