

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.4549 of 2004

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JUDGMENT:

This appeal is preferred against orders dated 30.06.2004 in W.C.No.3 of 2001 on the file of Commissioner for Women's Compensation & Assistant Commissioner of Labour, Mahabubnagar, whereunder, he granted compensation of Rs.1,84,170/- as against the claim of Rs.2,50,000/-. Aggrieved by the said order, insurance company preferred present appeal.

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

Respondent Nos.1 to 4 herein have filed application before the Commissioner for Workmen's Compensation contending that late Siddi Javeed was working as cleaner on lorry bearing No.AP 22-T-2300 belonging to fifth respondent herein, which is insured with appellant herein, died on 30.06.1999 while he was on duty on the said lorry. According to claimants, lorry started from Raichur at 11.00 am and reached Marikal at 1.30 p.m. and that the deceased was on duty as cleaner on the said lorry. They contended that the deceased was getting salary of Rs.2,000/- per month in addition to daily batta of Rs.50/-, and on account of his death, they suffered mental agony and the first respondent herein lost consortium, love and affection etc., and claimed a sum of Rs.2,50,000/-.

3. On behalf of claimants, one witness is examined and 5 documents are marked and on behalf of opposite party i.e., appellant herein two witnesses are examined and 2 documents are marked. On a over all consideration of oral and documentary evidence, the lower authority granted Rs.1,84,170/- taking monthly income at Rs.2,000/- and multiplier applicable to the age group of deceased. Aggrieved by order of the lower authority, insurance company preferred present appeal.

4. Heard arguments.

5. It is the contention of appellant that the lower authority did not consider the fact that there is no evidence to show that deceased was getting Rs.2,000/- per month and that he died during employment under fifth respondent herein. It is further contended that the lower authority failed to see that the evidence of AW.1 is only hearsay and she has no personal knowledge about the incident. It is further contended that the lower authority failed to consider that the deceased fell from a pial in a drunken state and the death was not in a motor accident, therefore, fastening liability on the insurance company is not at all correct and the order dated 30.06.2004 is liable to be set aside.

6. On the other hand, advocate for claimants supported order of the lower authority and contended that the documents Exs.A1 to A5 would clearly disclose that the deceased was on duty on date of accident and the death was during course of employment, therefore, objection of the appellant is not tenable.

7. Now the point that would arise for my consideration is:

Whether the order of the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Mahaboobnagar is legal, proper and correct?

POINT:

8. I have perused the material including the evidence of witnesses examined on behalf of respective parties during enquiry. From the evidence on record, it is clear that the deceased was working as cleaner on lorry bearing No.AP-22-T/2300 belonging to fifth respondent herein on a monthly salary of Rs.2,000/-. AW.1, who is the wife of deceased deposed about the employment and her evidence is supported by the owner, who is examined as RW.1. Though insurance company contended that there is collusion between claimants and the owner, there is no material on record to show that there is collusion between the claimants and owner.

9. On the other hand, F.I.R., inquest and postmortem report do support the version of claimants with regard to cause of the death, therefore, objection of appellant that there is no evidence to show that deceased died during course of employment, cannot be accepted.

10. On a scrutiny of the material, I feel that the lower authority rightly appreciated the evidence on record and came to a right conclusion with regard to cause of death and relationship of employee and employer between deceased and RW.1

11. The other objection of insurance company is that there is no evidence to show that the deceased was getting salary of Rs.2,000/- per month. For this, the claimants relied on the evidence of RW.1, who is owner. He clearly deposed that he was paying Rs.2,000/- per month and also paying Rs.50/- as daily batta. The lower authority has taken only the salary of Rs.2,000/- per month and ignored daily batta of Rs.50/-, therefore, objection with regard to wages of the deceased cannot be sustained.

12. On a scrutiny of the record, I am of the view that the lower authority has not committed any error and rightly appreciated the material on record and came to a right conclusion and that there are no grounds to interfere with the findings of the lower authority and appeal is devoid of merits.

13. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 04-03-2015.

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