

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.654 of 2005

JUDGMENT:

This civil miscellaneous appeal is filed by the applicants under Section 30 of the Workmen's Compensation Act, 1923, challenging the order dated 25.6.2005 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, (for short, the Commissioner) in W.C. No.284 of 2003F, wherein and whereby an amount of Rs.1,99,233/- was awarded to the applicants as against the claim of Rs.5,00,000/-.

2. The parties will hereinafter be referred to as they were arrayed before the Commissioner, for the sake of convenience.

3. The facts leading to filing of the present appeal are briefly as follows: The opposite party No.1 engaged one Pasala Obulreddy as Assistant Driller on its bore-well lorry bearing No.AP 25H 2700. On 08.10.2002, as per the directions of opposite party No.1, Pasala Obulreddy along with others was drilling a bore-well in Surbiriya village of Armur Mandal in Nizamabad District. While the work was going on, Pasala Obulreddy (hereinafter referred to as, the deceased) came into contact with high tension electric wire and he died on the way to hospital. By the time of the unfortunate death, the deceased was aged about 22 years and used to earn Rs.8,000/- per month towards salary and Rs.100/- per day as batta. The first applicant is brother and applicant Nos.2 and 3 are the sisters of the deceased. The applicants are dependants on the income of the deceased. By the time of the incident, the deceased was working under the control of the opposite party No.1. The bore-well lorry bearing No.AP 25H 2700 belongs to opposite party No.1 was insured with opposite party No.2 with effect from 29.3.2002 to 28.3.2003. Therefore, the opposite party Nos.1 and 2 are jointly and severally liable to pay compensation to the

applicants. Hence, the application.

4. The opposite party No.1 remained *ex parte*. The opposite party No.2 filed counter denying all the averments made in the application including the age and income of the applicant. It is contended that there was no relationship of employer and employee between Opposite Party No.1 and the deceased. Hence, the application is liable to be dismissed.

5. Basing on the above pleadings, the learned Commissioner framed the following issues:

- (1) Whether the deceased worker is a workman within the definition of the Act and he died during the course of employment under Opposite Party No.1?
- (2) If so, what was the monthly wages drawn by the deceased workman?
- (3) What was the age of the deceased workman at the time of his death?
- (4) Whether the applicant is (*sic.*, applicants are) entitled to compensation? If so, to what extent?

6. During the course of enquiry, on behalf of the applicants, P.W.1 was examined and Exs.A1 to A5 were marked. On behalf of opposite party No.2, no oral evidence was let in but Ex.B1 was marked.

7. The learned Commissioner, basing on the oral, documentary evidence and other material available on record, arrived at a conclusion that at the relevant point of time, the deceased was working as an employee of opposite party No.1 and allowed the petition in part by awarding a compensation of Rs.1,99,233/-. Feeling aggrieved by the order of the learned Commissioner, the applicants preferred the present appeal.

8. The contention of the learned counsel for the applicants is three fold:

- (1) The learned Commissioner has not considered the income of the deceased in right perspective and awarded

meager amount of compensation;

(2) The learned Commissioner failed to consider that the deceased is a skilled worker; and

(3) The learned Commissioner ought to have awarded interest at 12% per annum from the date of accident till the date of realization.

Per contra, learned counsel for the second respondent-opposite party No.2 submitted that the applicants failed to prove the income of the deceased. He further submitted that the applicants failed to prove that the deceased was a skilled worker. He also submitted that the applicants are entitled for interest, if any, from the date of the compensation fell due.

9. Now the points that arise for consideration in this appeal are:

(1) *Whether the learned Commissioner has committed error while assessing the wages of the deceased?*

(2) *Whether the learned Commissioner has committed error by not granting interest from the date of the accident?*

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Point No.1:

10. To substantiate the case, the first applicant examined himself as P.W.1 and got marked Exs.A1 to A5. As per the testimony of P.W.1, as on the date of the accident, the deceased was working as an Assistant Driller on the bore-well lorry bearing No.AP 25H 2700, which belongs to Opposite Party No.1. As per the testimony of P.W.1, the deceased, while attending the work, came into contact with an electric live wire and died on the way to hospital. A perusal of Exs.A2 and A3 clearly reveals that the deceased died on 08.10.2002. There is no much dispute with regard to the manner of the death of the deceased. As per the recitals of Ex.A1 (F.I.R.), on the date of unfortunate incident, the

deceased was attending the work on the bore-well lorry bearing No.AP 25H 2700, which belongs to the opposite party No.1. The oral and documentary evidence available on record clinchingly establishes the relationship of employer and employee between opposite party No.1 and the deceased. The material available on record clinchingly establishes that the deceased died out of and in the course of employment. Therefore, I am fully agreeing with the finding recorded by the learned Commissioner that the deceased died out of and in the course of employment.

11. The predominant contention of the learned counsel for the applicants is that the learned Commissioner has not considered the avocation of the deceased in right perspective. Except the self-served testimony of P.W.1, there is no other convincing evidence to establish that by the time of the death, the deceased was earning Rs.8,000/- per month. It is not uncommon to exaggerate the income of the deceased so as to claim more compensation. Absolutely there is no material on record to establish that the deceased was a skilled worker. In the absence of any evidence, the court has no option except to treat the deceased as unskilled worker. This court is unable to understand on what basis the learned Commissioner assessed the wages of the deceased as Rs.1,800/- per month. In the absence of documentary evidence, the Commissioner or the court has to place reliance on the Orders or Notifications issued by the Government from time to time stipulating minimum wages for different categories of employees. G.O.Ms. No.30, Labour Employment, Training and Practice (Labour-II) Department, dated 22.7.2000, is silent with regard to wages of Assistant Drillers. Utmost the deceased can be treated as Mazdoor as postulated in G.O. Ms. No.30, dated 22.7.2000. The basic wage of a Mazdoor is Rs.1,437/- and the Variable Dearness Allowance is Rs.620/- at the relevant point of time. The wages of the deceased can be taken as Rs.2,057/- per month. The learned Commissioner has rightly applied the factor 221.37 taking into consideration the age of the

deceased as 22 years. Thus the amount of compensation for which the applicants are entitled to is (Rs.2,057 X 50/100 X 221.37=) Rs.2,27,679/-. Accordingly, the point is answered holding that the learned Commissioner has committed error in assessing the wages of the deceased.

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Point No.2:

12. The other contention of the learned counsel for the applicants is that the learned Commissioner has not awarded interest from the date of the accident. The learned counsel for the opposite party No.2 submitted that the claimants are entitled for interest only from the date when the compensation falls due and not from the date of the accident.

13. 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*^[1], *Oriental Insurance Co. Ltd v Siby George & Sons*^[2], *National Insurance Co. Ltd., v Mubasir Ahmed*^[3], *Oriental Insurance Co. Ltd., v Mohd. Nasir*^[4], *Oriental Insurance Co. Ltd., v Bashaboina Bakkamma*^[5], *Patalapati Venkatanarasayamma v Susarla Subbalaxmi*^[6], *Maghar Singh v Jashwanth Singh*^[7] and *Midicharla Ramanamma v V.Naga Pratap*^[8] held that the applicant is entitled to interest @ 12% p.a. from the date of the accident till the date of realisation.

14. 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 12% per annum on the compensation amount of Rs.2,27,679/- from the date of the accident i.e., 08.10.2002 till the date of realization. Accordingly, this point is answered.

15. In the result, the appeal is partly allowed, enhancing the compensation from Rs.1,99,233/- to Rs.2,27,679/-. The opposite party Nos.1 and 2 are jointly and severally liable to pay the same with interest at 12% per annum from the date of the accident i.e., 08.10.2002 till the date of realization. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 26.8.2015.
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[\[1\]](#) (1976) 1 SCC 289

[\[2\]](#) (2012) 12 SCC 540

[\[3\]](#) (2007) 2 SCC 349

[\[4\]](#) (2009) 6 SCC 280

[\[5\]](#) 2011 (3) TAC 256

[\[6\]](#) 1986 ACJ 526 (A.P)

[\[7\]](#) 1998 (9) SCC 134

[\[8\]](#) 2003 (1) ALD 594