

HON'BLE SMT JUSTICE ANIS
C.M.A.No.2958 of 2004

J U D G M E N T:

This appeal is filed by the appellant/opposite party No.II under Section 30(a) of Workmens Compensation Act, 1923 (for short 'the Act'), aggrieved by the order dated 25.04.2003, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Cuddapah, in W.C. Case No.42 of 2002, awarding compensation of Rs.1,86,764/-.

2. The respondent Nos.1 & 2/applicants filed the above petition under the Act claiming compensation of Rs.2,00,000/- on account of the death of their son Rodda Raghu Kumar (hereinafter referred to as 'the deceased') who died in a motor vehicle accident on 12.03.1998 during the course of his employment.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the W.C. case.

4. The brief averments made in the W.C. Case are that the deceased was working as a cleaner under the employment of opposite party No.I on the Jeep bearing No.AP.04.B.3024 and the said Jeep was insured with opposite party No.II. On 12.03.1998 during the course of employment, the Jeep met with an accident and the son of the applicants i.e., deceased died. The deceased was aged about 18 years and he used to earn Rs.1,500/- p.m as salary and Rs.50/- towards batta per day and he met with an accident and died in the course of employment and as such both opposite parties Nos.I & II are liable to pay compensation.

5. Before the Court of Commissioner, both the opposite parties filed their counters, denied their liability and prayed the Court to dismiss the case.

6. Basing on the above pleadings, the Tribunal framed five issues and

to substantiate the claim, the applicants got examined A.Ws.1 & 2 and got marked Exs.A.1 to A.4 on their behalf. On behalf of the Insurance Company-opposite party No.II, R.W.1 was examined and Ex.B1 got marked.

7. After considering the oral and documentary evidence, the Commissioner of labour awarded compensation of Rs.1,86,764/- along with interest at 9% p.a to the applicants.

8. Being aggrieved by the order passed by the Commissioner of labour, the opposite party No.II preferred the present appeal.

9. The learned counsel appearing for the appellant/opposite party No.II argued that as per the evidence of A.W.2, who is the owner of the vehicle, under whom the deceased was working, stated that he was paying Rs.750/- p.m as salary and Rs.500/- p.m as batta. Therefore, the Commissioner has wrongly fixed the income of the deceased as Rs.1,650/- p.m against the income of Rs.1,250/- p.m stated by the employer. Therefore, prayed the Court to take the salary of the deceased as Rs.1,250/- p.m and fix the compensation.

10. Though paper publication for respondent Nos.1 & 2 was published and notice on respondent No.3 was served, none appeared and no one represented to argue on their behalf.

11. Having regard to the submissions made by the learned counsel appearing for the appellant, the points which are to be decided in this appeal are as follows:

1. Whether the appellant/opposite party No.II is liable to pay compensation to respondent Nos.1 & 2/applicants or not?
2. Whether the appellant/opposite party No.II is entitled to reduce the compensation awarded by the Commissioner of labour or not?

12. **P O I N T S:** There is no dispute that accident occurred due to rash and negligent driving of the driver of the Jeep bearing No.AP.04.B.3024, in which the deceased died on 12.03.1998 during the course of his employment under opposite party No.1. As per the evidence of AW.2 employer, he clearly stated that the deceased was working under him as a cleaner and he used to pay Rs.750/- p.m as salary and Rs.500/- towards batta. There is no dispute that at the time of accident, the Insurance policy was in force and it is evident as per Ex.B1. The learned counsel for the appellant has not pressed any other grounds except the salary of the deceased has to be taken as Rs.1,250/- but not Rs.1,650/-. A perusal of the evidence of AW.2 clearly shows that the deceased was the cleaner of his Jeep bearing No.AP.04.B.3024 and he died during the course of employment. Considering the evidence of AW.2, the income of the deceased can be fixed as Rs.1,250/- p.m. Thus, the compensation payable to respondent Nos.1 & 2/applicants comes to $226.38 \times 50/100 \times \text{Rs.}1250/- = \text{Rs.}1,41,488/-$ (rounded from Rs.1,41,487.50ps). The applicants in spite of receiving notice not contested the present appeal. Further, they have not also filed any appeal for enhancement of compensation. In view of the facts and circumstances of the case and in view of the evidence of AW.2 available on record the income of the deceased can be taken as Rs.1,250/- p.m and thus, the compensation earlier awarded by the Court of Commissioner of Rs.1,86,764/- is to be reduced to Rs.1,41,488/-.

13. Therefore, in view of the above discussion, the appeal is partly allowed reducing the quantum of compensation awarded by the Tribunal from Rs.1,86,764/- to Rs.1,41,488/- by confirming the rate of interest. No order as to costs.

14. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 27.10.2015

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