THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.1102 OF 2005

JUDGMENT:

This appeal is filed under Section 30 of the Workmen's Compensation Act, challenging the order dated 21.10.2004 in W.C. Case No.12 of 2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Warangal, wherein and whereby an amount of Rs.3,11,970/- was awarded to the petitioners towards compensation as against the claim of Rs.4,70,000/-.

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

3. The facts leading to filing of the present appeal are briefly as follows: First respondent engaged the services of Bhukya Saida as a loading and unloading labourer on lorry bearing No.AP 9U 05. On 06.8.2002, Bhukya Saida along with other labourers loaded the sand in the lorry at Akeru stream near Kommulavancha shivar and was proceeding to Hyderabad to unload the sand. When the lorry reached near Brahmana Kothapalli, the driver of the lorry had driven the same in a rash and negligent manner due to which he lost control over the lorry and thereby the lorry turned turtle. In the said accident, Bhukya Saida (hereinafter referred to as, the deceased) died on the spot. The Station House Officer, Nellikuduru Police Station registered a case in Crime No.68 of 2002 under Sections 304A and 337 IPC against the driver of the lorry. By the time of his death, the deceased was aged about 30 years and used to earn Rs.100/- per day. The first petitioner is the wife, petitioner Nos.2 and 3 are the children, petitioner Nos.4 and 5 are the parents of the deceased and they are all dependants on

his income. The lorry bearing No.AP 9U 05, which belongs to the first respondent, was insured with United India Insurance Company Limited; respondent Nos.2 and 3 are its Regional Office and Branch Office respectively. Therefore, respondent Nos.1 to 3 are jointly and severally liable to pay compensation of Rs.4,70,000/- to the petitioners.

4. First respondent did not choose to file counter. The Insurance Company filed counter denying all the averments made in the petition including the manner of the accident, age and income of the deceased, *inter alia*, contending that there is no employer-employee relationship between the first respondent and the deceased. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence the petition is liable to be dismissed.

5. Basing on the rival contentions, the learned Commissioner framed the following issues:

> (1) Whether the deceased was a worker as per the provisions of W.C. Act?
>
> (2) Whether the accident occurred during the course of and out of the employment of the deceased with respondent No.1?
>
> (3) Whether the compensation claimed is due or any part of that amount?
>
> (4) Whether the respondent NOs.1 and 2 are liable to pay any compensation as per W.C. Act?

6. During the course of enquiry, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A4 were marked. On behalf of the respondents, no oral evidence was adduced but Ex.B1 policy was marked on behalf of the Insurance Company.

7. On appraising the oral, documentary evidence and other material available on record, the learned Commissioner allowed the petition in part by awarding compensation of Rs.3,11,970/-. Feeling aggrieved by the order of the learned Commissioner, Insurance Company (respondent Nos.2 and 3) preferred the present appeal.

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

> (1) the learned Commissioner failed to consider that there is no documentary evidence to prove the income of the deceased; therefore, the Commissioner ought to have assessed the wages of the deceased as per the Minimum Wages Act.
> (2) the learned Commissioner has not calculated the compensation as per the provisions of the Workmen's Compensation Act and awarded lump sum amount towards compensation, which is not sustainable in law.
> (3) the findings recorded by the learned Commissioner are not supported by oral and documentary evidence available on record; therefore, the findings are liable to be set aside.

Per contra, learned counsel for the petitioners submitted that the learned Commissioner has rightly considered the oral testimony of P.Ws.1 and 2 and awarded just and reasonable compensation. She further submitted that if the employer has been paying more wages than prescribed under the Minimum Wages Act, the Commissioner can take that wages for assessing loss of earnings. She also submitted that there are no grounds much less valid grounds to interfere with the well considered order of the learned Commissioner.

9. Now the point that arises for consideration in this appeal is as follows:

> Whether the learned Commissioner has committed any irregularity while taking the monthly wages of the deceased as Rs.3,000/- per month instead of Rs.1,437/- per month plus variable dearness allowances as provided under the orders and notifications issued by the Government under the Minimum Wages Act?

<u>Point No.1</u>:

10. The oral testimony of P.Ws.1 and 2 coupled with Exs.A1 (First Information Report) and A2 (charge sheet) clearly reveals that by the time of the accident, the deceased was engaged as a labourer on lorry bearing No.AP 9U 05 belongs to first respondent. A perusal of Exs.A3

(inquest report) and A4 (post mortem examination report) clearly reveals that the deceased died due to the injuries sustained in a motor vehicle accident that occurred on 06.8.2002. The material available on record clinchingly establishes employer-employee relationship between opposite party No.1 and the deceased. The deceased died out and in course of employment. I am fully agreeing with the finding recorded by the learned Commissioner that the deceased died out of and in course of the employment.

11. The predominant contention of learned counsel for the Insurance Company is that the Commissioner has not properly considered the wages of the deceased. Refuting the said contention, learned counsel for the petitioners submitted that the material available on record clinchingly establishes that by the time of the accident, the deceased was earning Rs.3,000/- per month. In support of her contention, learned counsel for the petitioners has drawn my attention to the following decisions:

Soma Tirumala Reddy v K.Sambasiva Rao[1]: As per the principle enunciated therein, the wages payable to the employee are required to be not less than the minimum wages. In the said case, while the minimum wage for the post of driver as on the date of accident was Rs.2,282/-, the Commissioner took the wages at Rs.2,000/-.

Oriental Insurance Company Ltd., v Joya Ghosh[2]: Wherein it was observed as follows:

> The fixation of the minimum wages under the Minimum Wages Act is the minimum wages, which is required to be paid by the employer to his employee for a particular work carried out, and that does not mean that the employer could not or cannot pay wages more than the fixed wages under the Minimum Wages Act. Under Clauses (b) and (c), it is the actual wages drawn or paid have to be taken into consideration for calculation of the monthly wages of the workman, who has worked for less than a month with his

> employer and not the minimum wages fixed in the nature of employment under the Minimum Wages Act.

As per the principle enunciated therein, fixation of minimum wages under the Minimum Wages Act is the minimum wages require to be paid by the employer to the employee. To put it in different way, the employer shall not pay to the employee less than the wages mentioned under the Minimum Wages Act.

12. Learned counsel for the Insurance Company has drawn my attention to the decision in **United India Insurance Co. Ltd., v Vaggu Balram**[3] wherein it was held as follows:

> 5. I am unable to agree with the contention of the learned Counsel for the claimants that since RW1, the employer, admitted that he was paying Rs.3,500/- per month as wages to the deceased, the Commissioner rightly took that amount into consideration. RW1, as employer, is bound to maintain the record of wages that are being paid to his employees. If really RW1 was paying Rs.3,500/-, as wages, nothing prevented him from producing the documents showing payment of 3,500/- per month as wages to the deceased. Court can take judicial notice of the fact that some of the employers do not even pay adequate wage to the employees taking advantage of the fact that due to scarcity of employment they would willingly work on any monthly salary by the employer. It is only to prevent such mischief by the employers, Government in certain fields of employment has been fixing the minimum wages payable to the employees. In the absence of documentary evidence relating to the wage of the deceased, I do not wish to rely on the oral evidence of RW1 and the minimum wage fixed under the Minimum Wages Act has to be taken as the salary of the deceased.

As per the principle enunciated in the case 3rd cited above, in the absence of any documentary evidence, the Commissioner has to pay the compensation basing on the orders and notifications issued by the Government from time to time under the Minimum Wages Act.

13. As per the averments made in the petition, by the time of the accident, the first respondent had been paying Rs.100/- per day to the

deceased. As per the testimony of P.W.1, first respondent used to pay Rs.3,000/- per month as wages to the deceased. In the cross-examination, she denied the suggestion that her husband was not earning Rs.3,000/- per month. P.W.2, who was said to be the co-employee of the deceased, deposed that he did not file any document to prove that at the relevant point of time, he was working as an employee under the control of first respondent. In the cross-examination, P.W.1 in unequivocal terms deposed that he does not know whether Lakavath Laxman (P.W.2) was co-employee of her husband (deceased) or not. There is no consistency in the testimony of P.Ws.1 and 2 on material aspects.

14. The petitioners have not produced any evidence much less cogent and convincing evidence to establish that by the time of the accident, P.W.2 was working under the control of first respondent. The petitioners have not produced any document to prove from how long the deceased had been working as an employee of first respondent prior to unfortunate accident. As per the averments made in the petition, on the date of the accident, the deceased was engaged as a coolie for the purpose of loading and unloading of sand in the lorry belongs to the first respondent. Being the employer, the first respondent is competent person to speak about the wages, which he used to pay to the deceased. If really the first respondent had been paying Rs.3,000/- per month to the deceased towards wages, why he did not file counter admitting the same. The petitioners also did not choose to examine first respondent to prove the actual wages of the deceased at the time of his death. While appreciating the oral evidence, the court has to take meticulous care and caution. One way, P.W.1 is an interested witness. In case of interested witnesses, the court has to scrutinize the testimony with care and caution so as to ascertain the truthfulness or otherwise of the same. P.W.1 being the

widow of the deceased, there is every possibility of exaggerating the income of the deceased in order to get more compensation. As observed earlier, there is no single scrap of paper to prove the income of the deceased. When there is no positive evidence to establish that the deceased used to get Rs.3,000/- per month as pleaded by the petitioners, the learned Commissioner has to follow the orders and notifications issued by the Government from time to time under the Minimum Wages Act, to assess the income of the deceased at the relevant point of time. Therefore, the decisions relied upon by the learned counsel for the petitioners are no way helpful to substantiate stand of petitioners. The finding of the learned Commissioner that the deceased used to earn Rs.3,000/- per month is not supported by any evidence much less legally admissible evidence; therefore the said finding is hereby set aside.

15. As per G.O.Ms. No.30, Labour Employment Training & Factories (Labour-II) Department, dated 22.7.2000, the minimum wage of mazdoor is Rs.1,437/- plus variable dearness allowance as on that date is Rs.565.75 ps i.e., Rs.2,002.75 ps per month, which is rounded of to Rs.2,003/-. The recitals of Exs.A3 and A4 clearly reveal that the deceased was aged about 30 years by the time of his death. The appropriate factor applicable for the age of 30 years is 207.98. The compensation for which the petitioners are entitled to is as follows:

Rs.2,003 X 50/100 X 207.98 + Rs.2,08,291.97,

which is rounded of to Rs.2,08,292/-.

As rightly contended by the learned counsel for the Insurance Company, the learned Commissioner has not calculated the compensation in accordance with law. Therefore, the quantum of compensation awarded by the learned Commissioner requires to be reduced to Rs.2,08,292/-. Accordingly, the point is answered.

16. In the result, the appeal is allowed in part reducing the quantum of compensation from Rs.3,11,970/- to Rs.2,08,292/- (Rupees two lakhs eight thousand two hundred and ninety two only). The respondent Nos.1 to 3 are jointly and severally liable to deposit the same. There shall be no order as to costs in this appeal. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 09.9.2015.

YS

---

[1] 2007 (2) ALD 131

[2] LAWS (GAU)-2004-4-18 : 2004 (103) FLR 1000 : 2004 (106) FJR 982 : 2005 (1) LLJ 274

[3] 2005 ACJ 1384