

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.2679 of 2004

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Date:30.03.2015

Between:

Elugandula Raju Bai and others.

... Appellants.

AND

Podari Gangaranna and another.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.2679 of 2004

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JUDGMENT:

This appeal is preferred against order dated 21-05-2003 in W.C.No.224/2002 on the file of Commissioner for Workmens' Compensation-cum-Assistant Commissioner of Labour, Nizamabad.

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

The appellants herein submitted application to the Commissioner, Workmens' Compensation contending that deceased E. Mallesh was working as driver on tractor- trailer belonging to first respondent herein and drawing a salary of Rs.6,000/- per month besides batta of Rs.100/- per day and that he died during course of his employment on 14-05-2002, in the accident that took place to the tractor and both the respondents are jointly and severally liable to pay compensation of Rs.5,00,000/-. Insurance Company resisted the claim of the appellants and the lower authority, on consideration of oral evidence of P.W.1 and documents Exs.A1 to A4 & B1, by taking the wages of the deceased as Rs.3,649/-, granted a sum of Rs.3,36,018/-. Aggrieved by the quantum, appellants preferred present appeal.

3. Heard both sides.

4. Advocate for appellants submitted that the order of the lower authority is contrary to law and he contended when the claimants pleaded that the deceased was drawing salary of Rs.6,000/- per month, lower authority took only Rs.3,649/- as wages of the deceased and the same is contrary to the provisions of Act. He further submitted that the lower authority ought to have taken wages at Rs.6,000/- as observed by Hon'ble Supreme Court in **Minu Rout and another vs. Satya Pradyumna Mohapatra**.

On the other hand, Advocate for Insurance Company submitted that lower authority has taken the minimum wages applicable to the deceased for calculating the compensation and there is nothing wrong in the order of the lower authority. He further submitted that the decision relied on by appellants has no application as it is a claim

under Workmens' Compensation Act, and in the decision of Hon'ble Supreme Court, salary of Rs.6,000/- was taken for a truck driver in a motor accident case.

5. Now the point that would arise for my consideration in this appeal is whether the order of the Court below is legal, proper and correct?

6. **Point:-** There is no dispute with regard to employee and employer relationship between deceased and first respondent herein. There is also no dispute with regard to accident, due to which, the deceased died. Appellants contended that the deceased was getting Rs.6,000/- per month besides Rs.100/- per day as batta as driver on tractor belonging to first respondent. To prove the same, except relying on the self-serving testimony of the first claimant, no other witness is examined on behalf of the appellants. The deceased was only driver of a tractor and the lower authority, by taking minimum wages payable to a driver of heavy vehicle in a private transport undertaking, fixed the compensation. The main contention of the Advocate for appellants is that Rs.6,000/- pleaded by claimants have to be taken and to support his argument, he placed reliance on the judgment of the Hon'ble Supreme Court in **Minu Rout's Case (1 Supra)**. In that case, the deceased was a truck driver and it is a case of compensation under Motor Vehicles Act. Considering the post of a driver for the truck, the Hon'ble Supreme Court took salary of the deceased therein as Rs.6,000/- per month. Now the appellants want to invoke that observation for this case. As rightly pointed out by Advocate for Insurance Company as it is a claim under Workmens' Compensation Act, the minimum wages as prescribed by the Government for the different categories of jobs has to be taken in the absence of any positive and concrete proof for the salary of the employee. Admittedly, no positive proof is placed before the lower Tribunal to support the claim of appellants towards the wages of

deceased. The lower authority even took the minimum wages payable to a heavy vehicle driver in a private motor transport for the purpose of determining compensation. Though the job of a tractor driver cannot be equated with job of a heavy vehicle driver still the lower authority took the minimum wages payable for a heavy vehicle driver. So as rightly pointed out by the Advocate for Insurance Company, the decision of Hon'ble Supreme Court referred to above, is no way helpful to the appellants and their contention with regard to wages of the deceased cannot be accepted. On a scrutiny of the material, I am of the considered view that the lower authority was right in taking minimum wages for determining the compensation and the lower authority has not committed any error in appreciating the material on record and that the appeal is liable to be dismissed as devoid of merits.

7. For these reasons, appeal is dismissed as devoid of merits. No costs.

8. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:30.03.2015

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