

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.177 of 2015

JUDGMENT:

This Civil Miscellaneous Appeal under Section 30 of the Workmen's Compensation Act, 1923 presently known as Employees' Compensation Act, 1923, ('the Act', for brevity) by the appellant/second opposite party is directed against the order dated 23.01.2015 of the learned Commissioner for Employees' Compensation and the Assistant Commissioner of Labour – IV, Hyderabad passed in W.C.No.116 of 2012.

2. I have heard the submissions of the learned counsel for the appellant/second opposite party and the learned counsel for the first respondent/applicant. It is represented that the second respondent/first opposite party is not a necessary party. I have perused the material record.

3. The basic facts that lead to the filing of this appeal by the 2nd opposite party are as follows:

3.1 The applicant, who is the mother of the deceased – Shaker Patil, filed a compensation case under the provisions of the Act claiming compensation for the loss sustained by her owing to the untimely death of her son due to his involvement in an accident that had occurred on 06.09.2012 out of and during the course of his employment as a driver on the lorry bearing registration no.CG-07-C-0735 of the employer/first opposite party-cum-owner of the said lorry which is insured with the second opposite party/insurer of the said lorry.

3.2 The first opposite party having filed a counter had admitted the relationship of the deceased as his employee as a driver on his lorry bearing registration no.CG-07-C-0735 and also the age, wage, occurrence, manner of accident and the death of the deceased out of and during the course of his employment under him and had *inter alia* contended that the deceased had held a valid and effective driving license to drive the lorry and that his said lorry was insured with the second opposite party and that as on the date of

the accident the policy was valid and was in force and that the second opposite party is hence, liable to pay the compensation, if any, payable to the applicant who is the mother of the deceased.

3.3 The second opposite party had filed counter resisting the claim of the applicant on various grounds.

3.4 Basing on the pleadings of both the parties, the learned Commissioner had framed the following issues for trial:-

- 1. *Whether the deceased died due to the injuries sustained in the accident on 06.09.2012 during the course and out of his employment as driver on the lorry under the employment of the 1st opp. Party?***
- 2. *If yes, who are liable to pay compensation to the dependants of the deceased? and;***
- 3. *What is the amount of compensation entitled by the dependants of the deceased?***

(Reproduced verbatim)

3.5 At trial, the applicant was examined as AW1 and A1 to A17 were exhibited. The Assistant Manager of the second opposite party-insurance company was examined as RW1 and B1 and B2 were exhibited.

3.6 On merits, the learned Commissioner, having allowed the application of the claimant had awarded a total compensation of Rs.5,76,185/- with interest at the rate of 12% per annum. The operative portion of the impugned order reads as follows:

“In the result, it is held that the 1st and 2nd opposite parties are jointly and severally liable to pay the total compensation of Rs.5,76,185/- (Rupees five lakh seventy six thousand one hundred and eighty five only) payable to the applicant and the opposite parties are directed to deposit the said compensation of Rs.5,76,185/- along with interest @ 12% per annum on the amount of compensation from 07.10.2012 till the date of realization by means of a demand draft drawn on any nationalized bank in favour of the Commissioner for Employees Compensation and Assistant Commissioner of Labour – IV, Hyderabad within (30) days from the date of receipt of copy of this order.”

3.7 Aggrieved of the said order, the second opposite party had preferred this appeal.

4. The learned counsel for the appellant/second opposite party would contend as follows: 'The deceased was not employed under the first opposite party. The first opposite party is none other than the younger brother of the deceased. There is no relationship of employer and employee between the first opposite party and the deceased. The applicant and the 1st opposite party have colluded together and filed this petition against the second opposite party to make a wrongful gain. The applicant who is no other than the mother of the deceased and the 1st opposite party had failed to establish that the accident had occurred out of and during the course of the employment of the deceased under the 1st opposite party. The provisions of the enactment are not applicable to the case on hand. The learned Commissioner erred in entertaining the application and awarding compensation. The wife and the children of the deceased are necessary parties. The applicant ought to have added them as parties to the claim application filed by her. The petition is liable for dismissal for not impleading the said necessary parties. No evidence, muchless evidence worthy of credit, was adduced to prove the relationship of employer and employee. No document was filed to show that the deceased was employed as a driver under the first opposite party. The police complaint was lodged one month after the alleged accident only as an afterthought and after concocting the story of employment of the deceased under the first opposite party. The inquest and the Post-mortem reports are not filed. In fact, no inquest and no post-mortem were conducted. The deceased was not a workman and, therefore, his risk is not covered under the policy issued by the second opposite party. The deceased was also not having a valid and effective driving license, which authorized him to drive the lorry at the time of the accident. There is willful violation of the terms and conditions of the policy as well as the provisions of the Act and Motor Vehicles Act. The learned Commissioner did not at all appreciate the ratios in the decisions relied upon by the second opposite party. The learned Commissioner ought not to have granted any compensation. In any view of the matter, the compensation

awarded is high and excessive and the learned Commissioner ought not to have saddled the insurance company with the liability to pay interest contrary to the ratios in the judgments and the settled legal position. Hence, the appeal may be allowed and the impugned order may be set aside.'

5. On the other hand, the learned counsel for the first respondent/applicant, while supporting the impugned order, had *inter alia* contended as follows: 'The learned Commissioner had framed three material issues and had accurately considered the facts and appreciated the evidence in proper perspective and had further correctly applied the ratios in the decisions, which are applicable to the facts of the case, and had rightly held that the deceased was holding a valid and effective driving license to drive the vehicle at the time of accident and that there is employer and employee relationship between the first opposite party and the deceased and that the deceased can be treated as an employee and had accordingly answered the issues in favour of the applicant. There is no prohibition in law to the effect that a Son or a brother or a relative cannot be employed as a workman. The relationship between the deceased and the 1st opposite party is not at all a ground to deny the compensation claim of the mother who is a dependant on the deceased and his legal heir under the provisions of the Hindu Succession Act. None of the questions raised in the appeal are substantial questions and there is no merit in the appeal and therefore, the appeal is liable to be dismissed.'

6. In view of the facts and rival contentions, the points that arise for determination in this appeal are:-

1. ***Whether there is employee and employer relationship between the deceased and the 1st opposite party?***
2. ***Whether the deceased was having a valid and effective driving license to drive the subject vehicle? Whether the deceased had succumbed to the injuries sustained by him in an accident which had occurred out of and during the course of his employment as a driver on the subject lorry of the first opposite party, which is insured with the 2nd opposite party? Whether the opposite parties are liable to pay any compensation?***
3. ***Whether the amount of compensation awarded is high and excessive?***

4. *Whether the Commissioner had committed an error in awarding interest at the rate of 12% per annum on the compensation amount, as contended by the second opposite party?*
5. *Whether the impugned order is unsustainable and is liable to be set aside in the light of the contentions of the second opposite party?*
6. *To what relief.*

7. POINTS:-

7.1 To begin with, the case of the applicants is this: 'The applicant is the mother of the deceased, Shaker Patil. The deceased was employed as a driver on the lorry of the first opposite party. The said lorry was insured with the second opposite party. On 06.09.2012, the deceased had proceeded on the said lorry to V.Guard Industries, Hasthinapuram for taking a load of certain material at Goyal Transport, Hyderabad. After V-Guard Stabilizers were loaded in the lorry, the deceased was trying to place a tarpaulin on the load. While doing so, he had accidentally fell on the ground from the lorry and had sustained injuries. He was immediately shifted to B.B.R. Hospital, Balanagar, Hyderabad by one Mr.Hazeem of Goyal Transport and was admitted as an in-patient. While receiving treatment in the said hospital, he had succumbed to the injuries on 07.09.2012 at 19:30 hours. His dead body was shifted to his native place by his family members without the dead body being subjected to post-mortem and without intimating the police concerned. The applicant was under the impression that her other family members had already informed the police concerned about the deceased sustaining injuries in the accident and succumbing to the injuries. However, after knowing that no crime was registered, a complaint was made on 05.10.2012 to the Station House Officer of the Vanasthalipuram Police Station. And, accordingly a case in crime no.809 of 2012 was registered and was investigated into. The first opposite party used to pay a wage of Rs.9,000/- per month besides batta of Rs.150/- per day to the deceased. The deceased was aged 41 years as on the date of accident. His death had occasioned out

of and during the course of his employment on the lorry of the first opposite party, which is insured with the second opposite party. Hence, the applicant is entitled to claim compensation of Rs.12,00,000/- with interest at the rate of 12% per annum from the date of accident till the date of payment/realization.'

7.1 The 1st opposite party filed a counter supporting the case of the applicant who is no other than his mother. He had also admitted the employment of the deceased under him. He is admittedly the brother of the deceased.

7.2 The second opposite party had filed a counter *inter alia* contending as follows: 'The claim application of the applicant is not maintainable under facts and law. The material allegations in the claim application are all false and invented. The contention that the deceased was an employee under the first opposite party is denied. The deceased was not employed as a driver on the subject lorry. The narration and the occurrence of the accident, as stated by the applicant, and the further contention that the death of the deceased had occurred out of and during the course of his employment as driver on the lorry of the first opposite party are denied. The deceased was not having a valid and effective driving license to drive the lorry at the relevant point of time. Immediately after the accident, no information was furnished to the second opposite party either by the family members of the deceased or by the first opposite party. The police complaint was belatedly lodged i.e., one month after the alleged accident, after deliberations and after weaving a story of employment injury and that the death of the deceased out of and during the course of employment; and, later a false case was got registered to enable the claimant to claim some compensation and make a wrongful gain and cause loss to the second opposite party. The first opposite party is none other than the younger brother of the deceased. The deceased, the first opposite party and his mother, who is the applicant, used to live together in one accommodation and under one common roof. Admittedly, the deceased was having wife and children. They are necessary parties. The petition is liable to be dismissed for not impleading the said necessary parties. Since

the claim is a false claim, the applicant is not entitled to claim any compensation. The claim is exorbitant.'

7.3 The applicant, who is the mother of the deceased deposed in line with her pleaded case. She is admittedly not an eyewitness to the accident. In her evidence, the copy of the First Information Report, the copy of the statement of the deceased, the copies of the case diaries [parts 1 and 2], the copy of the scene of offence panchanama along with sketch, the copy of the final report in the crime, the medical records like medical bills, MLC report of the hospital, O.P chit, the case record maintained by the hospital and the medical reports were marked as exhibits A1 to A10. The death report issued by BBR Hospital is exhibited as exhibit A17. The vehicular documents like the copies of the R.C., the permit, the tax receipt, the fitness certificate showing road worthiness of the lorry, the insurance policy and the driving licence of the deceased were exhibited as exhibits A11 to A17. The officer of the insurance company who was examined as RW1 had affirmed in his evidence the defence of the insurance company. He had asserted that the driving licence of the deceased was valid from 02.06.2005 to 09.05.2012 and that the deceased was not holding a valid licence as on 06.09.2012, i.e., the date of the accident and that there is wilful violation of the terms and conditions of the policy and the provisions of the M.V.Act and the rules made there under by the 1st opposite party and that therefore, the company is not liable to pay any compensation.

7.4 The insurance company is strongly resisting the claim and disputing the relationship of employer and employee between the 1st opposite party and the deceased mainly on the grounds that the deceased is admittedly the brother of the 1st opposite party; and, the deceased, the 1st opposite party and the applicant, who is their mother used to live in one accommodation; and, the first information was lodged with the police belatedly, i.e., about one month after the accident, after deliberations and in collusion; and, no inquest and post mortem report were filed as in fact no inquest and postmortem were conducted.

8. The learned counsel for the insurance company/2nd opposite party had placed reliance on the following decisions:

1. **National Insurance Co. Ltd. V. Smt. Sabia Begum and others**^[1]
2. **United India Insurance Co. Ltd. V. Etnoori Yadagiri Goud and others**^[2]
3. **Smt. M.Akkavva v. New India Assurance Co. Poona and others**^[3]
4. **Gottimukkala Appala Narasimha Raju and others v. National Insurance Company Limited and Another**^[4]
5. **Lata Ramchandra Ubale v. Ramchadra Shankar Ubale and another**^[5]

8.1 Per contra, the learned counsel for the applicant had contended as follows:

There is no prohibition in law that a Son or a brother or a relative cannot be employed as a workman. The transport trade is a complex trade and in view of the nature of the trade, it is very difficult to get reliable workmen as drivers and cleaners. Therefore, it is a common practice amongst the lorry owners involved in transport trade to employ their own kith and kin as employees and, therefore, on the ground of relationship between the deceased and the 1st opposite party, the compensation claim of the mother who is a dependant on the deceased and a legal heir of the deceased as per the provisions of the Hindu Succession Act, cannot be denied.

The learned counsel had also placed reliance on the following decisions:

1. **United India Insurance Company Ltd. V. Vijay Kumar**^[6]
2. **Manohar Bhimappa More v. Mahadev Bhimappa More**^[7]
3. **United India Insurance Company Ltd. V. Baljit Kaur**^[8]

4. **United India Insurance Company Ltd. V. Prakash Shankar Gurav**^[9]
5. **Oriental Insurance Company Ltd. V. Hanumant**^[10]
6. **New India Assurance Company Ltd. V. G.D.Dengi**^[11]
7. **Smt.T.S.Shylaja v. Oriental Insurance Co. Ltd.**^[12]
8. **United India Insurance Co. Ltd. V. Smt. G.Gouramma**^[13]

8.2 I have given earnest consideration to the pleadings, the evidence and the submissions. I have gone through the cited cases carefully.

8.3 The case of the applicant is that the deceased, while placing a tarpaulin over the load of V-Guard stabilizers loaded in the lorry, had accidentally fallen down from the lorry and had sustained serious injuries in the said accident, which had occurred on 06.09.2012 and that later, he had succumbed to the injuries on 07.09.2012, while receiving treatment in the hospital. It is borne out by record that the deceased was shifted to the hospital by the employee of Goyal Transport, Hyderabad where the said load was loaded into the lorry and the accident had taken place. Therefore, the deceased sustained injuries in the pleaded accident cannot be disputed. Further, the recitals in the crime record also support the said version of the applicant. Since the deceased had died on the next day of the accident and while receiving treatment in the hospital, the absence of an inquest report or a post mortem report is not going to affect the case of the applicants. On a report lodged on 05.10.2012, the crime was registered and investigated into. Therefore, the death of the deceased on account of the injuries sustained in the accident, viz., accidental fall from the lorry while placing a tarpaulin on the load in the lorry is sufficiently established. The deceased is no other than the brother of the owner of the lorry. Therefore, the next question is as to whether the claim of the applicant and the 1st opposite party that the deceased was employed as a driver on the lorry of the 1st opposite party at the time of the accident is true or not. The applicant and the 1st opposite party urge that the

deceased was employed as the driver on the lorry of the 1st opposite party at the time of the accident. Placing strong reliance on the close relationship and the delay in lodging the report and also the plea that the deceased, his brother (the owner of the vehicle) and the mother (the applicant) lived under one roof during the life time of the deceased, the learned counsel for the 2nd opposite party forcefully contended that the theory of employment of the deceased on the lorry of the 1st opposite party is a story created after deliberations though there is no such relationship and that the delay in lodging the first information with the police also lays bare the said fact.

8.4 In **Smt. Sabia Begum and others** (1 supra), the owner of the vehicle is the father of the deceased; and, the deceased was said to have been employed as a driver on the vehicle of his father. While reversing the order of the learned Commissioner, this Court having found that there is no independent evidence on record with regard to the employment had found fault with the Tribunal for recording a finding in that regard on mere assumption and had held that the applicants therein had failed to prove the employment of the deceased under his father. In **Etnoori Yadagiri Goud and others** (2 supra), the brother of the owner of the motor cycle had sustained fatal injuries when the said motor cycle being driven by him had met with an accident. Since there was no Master and Servant relationship, this Court had held that the insurance company cannot be fastened with any liability. In **Smt. M.Akkavva** (3 supra), the High Court of Karnataka had noted that the Tribunal did not accept the claimants' case that the deceased was travelling in the lorry on an errand of the insured to whom the goods in the vehicle belonged to. It was not the case of the claimants that the deceased was a workman under the owner and was travelling in the vehicle in the course of employment. In **Gottimukkala Appala Narasimha Raju** (4 supra), the facts disclose that the deceased and the owner of the tractor are husband and wife. The Hon'ble Supreme Court on facts found that the husband and the wife were living separately in view of certain disputes between them and hence held that in the circumstances, the question of the husband being a workman under his wife appears to be a far fetched and

wholly absurd. In **Lata Ramchandra Ubale v. Ramchadra Shankar Ubale** (5 supra), the insurance company disputed the liability on the ground of absence of employer and employee relationship between the deceased and his father who is the owner of the jeep. The investigator of the insurance company gave evidence that the father of the deceased and his brother had denied the fact of employment and stated that the deceased was a family member and was not employed. In the light of the evidence, the High Court of Judicature at Bombay held that the Commissioner was justified in concluding that the deceased was not employed by his father.

8.5 In **United India Insurance Company Ltd. V. Vijay Kumar** (6 supra); the insurance company disputed the liability on the ground that the driver is the brother of the owner of the truck and that the claim application has been filed in collusion. The High Court of Punjab and Haryana held that there is no law which prohibits a person from employing his brother as a driver of the vehicle owned by him and that merely employment of a brother as a driver on truck for salary on the truck owned by the other brother does not vitiate the claim of the applicant. In **Manohar Bhimappa More v. Mahadev Bhimappa More** (7 supra) the Commissioner denied compensation on the ground that the injured is the brother of the owner of the vehicle and also the guarantor for payment of the loan; the High Court of Karnataka held that there is no inhibition in law for employment of a member of a family in connection with tractor trailer and that in view of peculiar family relationship, it is absurd to insist on documentary proof of appointment and the payment of wages by cash as the only mode of consideration for proof of employment. It is also held that in the rural life style, it is not uncommon to find the practice of oral appointment for specific purpose and time; and that many a time, the persons in the family would be employed for doing the work instead of employing strangers. In **United India Insurance Company Ltd. V. Baljit Kaur** (8 supra), the truck was registered in the name of the father of the deceased driver. While upholding the award for compensation passed by the learned Commissioner, it was held that the claimant could not be deprived of getting compensation on account of the said relationship. In **United India Insurance**

Company Ltd. V. Prakash Shankar Gurav (9 supra), the facts disclose that the father engaged his son as an employee on his vehicle. It was held by the High Court of Karnataka that such engagement of son as an employee on the vehicle of the father is not prohibited in law nor it can be said that such a situation is not normally possible and that just as in any other avocation, it is possible for a father to engage his son as an employee. In **Oriental Insurance Company Ltd. V. Hanumant** (10 supra), the facts disclose that the owner of the vehicle is the father of the injured. While holding that the parties would not go for documentation of the contract nor create any documentary material to prove payment of wages in view of peculiar family relationship, it was further held that relationship is not a ground in law to infer the absence of relationship of employer and employee. In **New India Assurance Company Ltd. V. G.D.Dengi** (11 supra), a claim in respect of death of a driver of a car was made by the mother. However, his father is the owner of the car. Though the employer and employee relationship was admitted by the father, no documentary proof was produced in support of the said relationship. On facts, it was found that the claimant and her husband are living separately; and, while confirming the award passed by the Commissioner, it was held that merely because there was no divorce between the applicant and her husband and as no documentary evidence was produced to establish contract of employment, the order of the Commissioner need not be interfered with. In **Smt.T.S.Shylaja v. Oriental Insurance Co. Ltd.** (12 supra) a claim filed before the Commissioner arose out of a motor accident in which the deceased who had lost his life is the driver of the vehicle which belonged to his brother; And, after the accident he was removed to the hospital, where he had died two days after the accident. The mother of the deceased made the said claim. The insurance company disputed the relationship of employee and employer between the deceased and his brother and had further contended that the remedy of the mother was only by way of a claim for payment of compensation under the M.V.Act. The Supreme Court first noted that the High Court had overlooked the fact that the respondent/owner of the vehicle had appeared as a witness and had clearly stated that the deceased was his younger brother, but, was working as a paid

driver under him and had held that the only reason which the High Court has given to upset the finding of the Commissioner is that the Commissioner could not blindly accept the oral evidence without analyzing the documentary evidence on record and that the High Court could not have, without adverting to the documents vaguely referred to by it, upset the finding of fact which the Commissioner was entitled to record and that the High Court remained oblivious of the basic requirement of law of maintainability of appeal before it and inasmuch as it treated the appeal to be one on facts and committed an error which needs to be corrected. In **United India Insurance Co. Ltd. V. Smt. G.Gouramma** (13 supra) the deceased was engaged as a driver of an auto rickshaw by his brother, who was the owner of the said vehicle. This Court held that there is no bar for the brother to be engaged as a driver, on wages, and that there is no improbability in that regard and some time, it so happens. It was further held that no universal rule, or, conviction, can be had, in respect of such an employment being not true, and the like.

8.6 On a careful reading of all the above decisions cited by both the sides, this Court is of the considered view that there is no prohibition in law or bar for the brother to be engaged as the driver, on wages. Merely on the fact that the injured/deceased is related to the employer/owner of the vehicle, there cannot be an inference that there is no employer-employee relationship. As rightly held by this Court and the other High Courts in various decisions, no universal rule can be laid down or a conviction can be had in respect of such an employment being not true as it is not uncommon in our country to find the practice of oral appointment for specific purpose and time; and that many a time, the persons in the family would be employed for doing the work instead of employing strangers. The learned counsel for the 2nd opposite party pointing out at the delay of about one month in lodging the first information with the police concerned had contended that there is collusion and that the claim is false; she had next pointed out certain recitals in the documents exhibited and had forcefully contended that the deceased, the 1st opposite party who is no other than his brother and their mother who is the applicant herein had all lived in one accommodation and under one common roof

during the life time of the deceased and that, therefore, it is absurd to contend that there is employer-employee relationship between the brothers.

Accepting for a moment that they all had lived together under one roof during the life time of the deceased, the said aspect, in the well considered view of this court, is not going to make a difference and does not advance the case of the insurance company as it is sufficiently established that the deceased had sustained injuries in an accident that had occurred due to his fall from the lorry of the 1st opposite party while he was trying to put a tarpaulin on the load in the lorry. The said well established version of the applicant also finds place in the crime records. If really the deceased was not working as a driver on the lorry of his brother and was not under the employment of his brother, he would not have been present at that time at the place where the load was loaded into the lorry. Further, but for his employment as a driver and his presence there, he would not have indulged in the act of placing a tarpaulin over the load in the lorry; but, for his presence at the place and the act he did, the accident would not have occurred and he would not have sustained injuries which had resulted in his death. Thus, on the application of the test of preponderance of probabilities, this Court finds that the learned Commissioner was justified in holding that the deceased was employed as a driver on the lorry of the 1st opposite party at the time of the accident.

9. Coming to the issue of absence of valid and effective driving licence, which authorized the deceased to drive the lorry at the relevant time, the licence held by the driver which authorized him to drive the heavy vehicle had expired as on the date of the accident is not in dispute. The learned counsel for the 2nd opposite party had placed reliance on a decision in **National Insurance Company Ltd. V. Vidhyadhar Mahariwala** ^[14]. The facts of this cited case reveal that the licence of the driver had expired before the accident; but, the same was got renewed after the accident; and, therefore, the driver possessed no valid licence as on the date of the accident; and, hence, he was disqualified to drive the truck. Therefore, the Supreme Court had held that the insurance company would have no liability

in that case. However, in the case on hand, the driver was not driving the vehicle at the time of the accident and the present claim is not one under the M.V.Act. The learned counsel for the respondent relied upon a decision in **New India Assurance Company Ltd v. Rubia Rasoolsab Desai**^[15], wherein a loader on the tractor died when the loaded soil fell on him when the tractor was stationary. Therefore, it was held that the question whether it was a light motor vehicle or a heavy goods vehicle does not loom large and that the point that has to be looked into is whether the deceased died in the course of employment or not. In **United India Insurance Co. Ltd v. Annakutty**^[16] the High Court of Kerala while deciding an appeal presented by the insurance company against a claim arising out of an accident resulting in the death of a workman (the driver) had held as follows: 'Necessarily, even if there was any contravention of the provisions of law, the compensation shall have to be paid by the employer wherever death occurs as a result of the accident when there was a valid insurance policy on the insurer; Therefore, the absence of a driving licence cannot be taken as a reason to deny the compensation, in a case, like this where the accident had resulted, admittedly in the death of the workman.' The learned Commissioner in his order, which is impugned, had held that in the instant case, it is apparent that there is no evidence on record showing that the insured in spite of having knowledge that the validity of the period of the driving licence of the deceased workman has expired prior to the date of the accident had handed over the aforesaid vehicle to the deceased to ply the same on the date of accident and that nothing is placed on record whereby the 2nd opposite party can escape its liability. Having so held, the learned Commissioner had fastened the liability jointly and severally on both the opposite parties. Having regard to the facts and the evidence brought on record and the legal position obtaining, this Court is of the view that the Commissioner was justified in doing so.

10. Dealing with the quantum of compensation, what is to be noted is that the learned Commissioner had taken the wage of the heavy vehicle driver as

per the relevant GO and the age of the deceased as mentioned in the driving licence, which was not disputed, and had determined the compensation by incorporating the said components in the formula. Therefore, this Court finds that there are no grounds to hold that the compensation awarded is excessive.

11. Coming finally to the contention that the deceased was admittedly having a wife and three children and that the mother of the deceased had filed the application filed for compensation without impleading the said necessary parties and hence, the application is not maintainable and is liable to be dismissed, this Court does not find any acceptable merit in this contention for the following reasons. The learned Commissioner had awarded compensation while allowing the claim application of the applicant/the mother of the deceased and had further directed that the opposite parties who are jointly and severally liable shall deposit the said compensation with interest by means of a demand draft drawn on any Nationalized Bank in favour of the Commissioner for Employees' compensation and the Assistant Commissioner of Labour-IV, Hyderabad.

The compensation was not yet disbursed; as on preferring this appeal by the 2nd opposite party, interim stay was granted by this Court and the said stay orders are in force till date. Under the provisions of the Act and the rules made there under, the Commissioner is empowered to apportion the compensation amongst all the dependants of the deceased. Therefore, as per law and the procedure contemplated under law and the practice, the commissioner is obliged to conduct an enquiry which is commonly known as 'dependants enquiry' before apportionment of the compensation amongst the dependants of the deceased workman and before releasing the amount. Therefore, the questions like the entitlement of the wife of the deceased and his children to receive the compensation amounts along with the applicant herein as per their individual entitlement and the apportionment of the compensation amongst the dependants of the deceased would be undertaken by the learned Commissioner. Therefore, without setting aside the order impugned on the ground that the wife and children of the deceased

are not impleaded, it would be just and fair to direct the Registry to mark a copy of this judgment to the learned Commissioner concerned and direct the learned Commissioner to apportion the compensation amongst all the eligible dependants of the deceased after conducting an enquiry as per law. Hence, on the ground of non-impleadment of the wife and the children of the deceased, the application need not be dismissed as there is an adequate mechanism of apportionment of compensation amongst the dependants of the deceased.

12. The Commissioner granted interest at 12% per annum from 07.12.2012 to realization. Section 4A of the Workmen's Compensation Act, which deals with 'compensation to be paid, when due and penalty for default' reads as under:

4-A: Compensation to be paid, when due and penalty for default:

-

(1) compensation under Section 4 shall be paid as soon as it falls due.

(2) xxx

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under Clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed."

Under the said provision, the Commissioner is empowered to direct that the employer shall in addition to the arrears pay interest @ 12% per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due. Further, in the decision in **The Oriental Insurance Company Ltd. V. Siby George**^[17], the Supreme Court considered the following question: 'When does the payment of compensation under the WC Act, 1923 become due and consequently what

is the point in time from which interest would be payable on the amount of compensation as provided under Section 4(a)(3) of the Act?' The Supreme Court having considered the legal position and the ratios in the precedents had held as under: **"The decisions in Pratap Narain Singh Deo was by a four Judge Bench and in Valsala by a three Judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in Mubasir Ahmed and Mohd. Nasir, each of which was heard by two judges. But, the earlier decisions in Pratap Narain Singh Deo and Valsala were not brought to the notice of the Court in the two latter decisions in Mubasir Ahmed and Mohd. Nasir. In the light of the decisions in Pratap Narain Singh Deo and Valsala, it is not open to contend that the payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made. The decisions in Mubasir Ahmed and Mohd. Nasir insofar as they took a contrary view to the earlier decisions in Pratap Narain Singh Deo and Valsala do not express the correct view and do not make binding precedents."** Therefore, in view of the settled legal position, the order of the learned Commissioner awarding interest at 12% per annum from 07.12.2012 to realisation cannot be said to be not in accordance with law. Therefore, the findings in regard to award of interest in the impugned order of the learned Commissioner must be held to be correct.

13. All the points are accordingly answered in favour of the applicant and against the 2nd opposite party/appellant. Having regard to the above reasons, this Court finds that the learned Commissioner is justified in allowing the application and awarding compensation and that the order which is a well reasoned order calls for no interference. Accordingly, this Court finds that there is no substantial question of law involved in the appeal and that the appeal is devoid of merit and is liable to be dismissed.

14. In the result, the appeal is dismissed. No costs.

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

4th September 2015
BVV

-
- [\[1\]](#) C.M.A.No.574 of 2003 dated 23.09.2005 (unreported)
 - [\[2\]](#) 1995 ACJ 600
 - [\[3\]](#) AIR 1988 KARNATAKA 238
 - [\[4\]](#) (2007)13 Supreme Court Cases 446
 - [\[5\]](#) 2013 ACJ 1322
 - [\[6\]](#) 2012 ACJ 2281
 - [\[7\]](#) 2006 ACJ 850
 - [\[8\]](#) 2010 ACJ 964
 - [\[9\]](#) 2006 ACJ 747
 - [\[10\]](#) 2006 ACJ 251
 - [\[11\]](#) 2009 ACJ 168
 - [\[12\]](#) 2014 LLR 117
 - [\[13\]](#) Judgment dt.23.07.2004 in Appeal against order No.4561 of 2003
 - [\[14\]](#) 2008 ACJ 2860
 - [\[15\]](#) 2011 ACJ 748
 - [\[16\]](#) (2005-III-LLJ 824)
 - [\[17\]](#) (2012 LLR 897)