

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.1277 OF 2005

JUDGMENT:

1 This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, challenging the Order, dated 04.04.2003 passed in W.C.No.74 of 2001 on the file of the Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour-IV, Hyderabad.

2 For the sake of convenience, the parties to this civil miscellaneous appeal, would hereinafter, be referred to as they are arrayed before the lower authority.

3 The facts that led to the filing of the present appeal, briefly, are as follows:

4 The applicants filed an application under Section 22 of the W.C. Act claiming compensation of Rs.4.00 lakhs for the death of one Sekhar Reddy in a motor vehicle accident that occurred on 25.06.2001 out of and in course of employment. By the time of accident, Sekhar Reddy (hereinafter referred to as 'the deceased') was engaged as driver on the Ambassador car bearing No.AP 10 L 7716, which belongs to the Opposite Party No.1 and insured with the Opposite Party No.2. By the date of accident, the deceased was earning Rs.3,000/- p.m. besides Rs.100/- towards batta. Therefore, the Opposite Party Nos.1 and 2 are jointly and severally liable to pay compensation to the applicant. Hence the applicants filed the claim petition seeking compensation of Rs.4.00 lakhs.

5 Opposite Party No.1 filed counter admitting all the averments made in the application. The car bearing No.AP 10 L 7716 which belongs to him was insured with the Opposite Party No.2 by the date of accident. Hence the Opposite Party No.2 alone is liable to pay compensation, if any, to the applicants.

6 Opposite Party No.2 filed counter denying all the averments made in the petition including the manner of accident, age and income of the deceased, inter alia, contending that the application is not maintainable under section 22 of the W.C. Act as there was no employer and employee relationship between the Opposite Party No.1 and the deceased. The applicants are not entitled to claim compensation unless they prove that the deceased was having valid and

effective driving licence as on the date of accident. The applicants are not entitled to claim interest as claimed. The amount of compensation claimed is excessive and exorbitant. Hence the petition may be dismissed.

7 Basing on the above pleadings, the learned Commissioner framed three issues for enquiry.

8 During the course of enquiry, on behalf of the applicants, A.Ws.1 and 2 were examined and Exs.A.1 to A.6 were marked. On behalf of the Opposite Party No.1, the Opposite Party No.1 himself examined as R.W.1 and got marked Ex.R.1. On behalf of the Opposite Party No.2, no oral or documentary evidence was let in.

9 On appreciating the oral, documentary evidence and other material available on record, the learned Commissioner arrived at a conclusion that the deceased died out of and in course of his employment and allowed the petition in part by awarding compensation of Rs.2,26,567/-, with interest @ 9% p.a. from the date of accident till the date of deposit if the Opposite Parties fail to deposit the compensation amount within 30 days, from the date of receipt of the order. Feeling aggrieved by the order of the learned Commissioner for Workmen's Compensation in not awarding interest @ 12% p.a., the applicants preferred the present appeal.

10 The sole contention of the learned counsel for the applicants is that the learned Commissioner erred in not awarding interest @ 12% p.a. from the date of accident till the date of deposit of the amount of compensation.

11 *Per contra*, the learned counsel for the Opposite Party No.2 submitted that the applicants are not entitled to interest @ 12% p.a. from the date of accident till the date of deposit. He further submitted that the amount fell due is from the date of passing of the order but not from the date of accident and hence the applicants are not entitled to claim interest from the date of accident.

12 The substantial question of law that arises for determination in this appeal is "Whether the learned Commissioner committed error in not awarding interest @ 12% p.a. from the date of accident till the date of deposit"?

13 As per the findings of the learned Commissioner, the Opposite Party No.1 engaged the deceased as driver on the car bearing No.AP 10L 7716. The

material placed before the learned Commissioner clinchingly establishes that the deceased died out of and during the course of employment. The findings recorded by the learned Commissioner with regard to the employer and employee relationship between the Opposite Party No.1 and the deceased is supported by evidence more so legally admissible evidence. The findings of the learned Commissioner that the deceased died out of and during the course of employment became final in view of non-filing of appeal by the Opposite Parties. By following the procedure contemplated under the provisions of the W.C. Act, the learned Commissioner awarded compensation of Rs.2,26,567/-. The Opposite Parties did not choose to file appeal or cross objections challenging the amount of compensation awarded by the learned Commissioner. The findings of the learned Commissioner that the applicants are entitled for compensation of Rs.2,26,567/- also became final in view of non-filing of appeal or cross objections by the Opposite Parties. In all fairness, the learned counsel for the applicants submitted that the applicants are not disputing the quantum of compensation awarded by the learned Commissioner. Hence I am not inclined to delve into the validity or legality of the quantum of compensation awarded by the learned Commissioner.

14 As per Section 4 A of the W.C. Act, the applicants are entitled to interest from the date when the amount fell due. In the claim petition, the claimants claimed interest @ 24% p.a. 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, Oriental Insurance Co. Ltd v Siby George & Sons, National Insurance Co. Ltd., v Mubasir Ahmed, Oriental Insurance Co. Ltd., v Mohd. Nasir, Oriental Insurance Co. Ltd., v Bashaboina Bakkamma, Patalapati Venkatanarasayamma v Susarla Subbalaxmi, Maghar Singh v Jashwanth Singh*** and ***Midicharla Ramanamma v V.Naga Pratap*** held that the applicants are entitled to interest from the date of the accident till the date of realisation.

15. 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 from the date of the

accident till the date of deposit. Accordingly, the point is answered.

16. In the result, the appeal is allowed, only to the extent of awarding interest at 12% per annum from the date of the accident i.e., 25.06.2001 till the date of deposit excluding 30 days. The opposite party Nos.1 and 2 are jointly and severally liable to pay the compensation with interest at 12% per annum accordingly. The order passed by the learned Commissioner shall remain unaltered in all other aspects. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 9th October, 2015

Kvsn