

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.845 OF 2005

JUDGMENT:

This appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 (the Act), challenging the order dated 30.4.2005 passed in W.C. Case No.40 of 2000 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada.

2. The parties to this appeal will be referred to as they are arrayed before the learned Commissioner, to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows: Originally, the wife and daughter of Guddeti Tirupathi Swamy filed application under Section 4A of the W.C. Act read with Rule 8 of the Workmen's Compensation Rules claiming compensation of Rs.2,50,000/- for the death of Tirupathi Swamy out of and in course of employment. Subsequently, applicant Nos.3 and 4 (mother and sister of Tirupathi Swamy) were brought on record. Tirupathi Swamy was engaged as employee in the factory of opposite party No.1. On 24.7.1999 Tirupathi Swamy (hereinafter referred to as, the deceased) fell down from the machinery due to electric shock and died. By the time of death, the deceased was aged about 22 years and drawing a salary of Rs.3,000/- per month. The machinery was insured with opposite party No.2; therefore, opposite party Nos.1 and 2 are jointly and severally liable to pay compensation.

4. The opposite party No.1 filed written statement in tune with the averments made in the application, *inter alia*, admitting the factum of employer-employee relationship between opposite party No.1 and the deceased.

5. The opposite party No.2 filed counter denying all the averments made in the application including the manner of the death of deceased, *inter alia*, contending that there was no employer-employee relationship between opposite party No.1 and the deceased. The amount of compensation claimed by the applicants is highly excessive and exorbitant. Hence, the petition may be dismissed.

6. During the course of enquiry, the applicant No.1 examined herself as A.W.1, the applicant No.3 was examined as A.W.2, A.W.3 was examined to prove the factum of employment of the deceased, and Exs.A1 and A2 were marked. On behalf of opposite parties, Exs.B1 to B9 were marked.

7. On an analysis of the evidence available on record, the learned Commissioner allowed the application in part by awarding an amount of Rs.95,146/- towards compensation as against the claim of Rs.2,50,000/-. Aggrieved with the manner of apportionment of compensation, the applicant Nos.1 and 2 preferred the present appeal.

8. The learned counsel for the applicants submitted that the learned Commissioner committed grave error while not awarding any amount to the applicant Nos.1 and 2, who are wife and minor daughter of the deceased. He further submitted that the findings of the learned Commissioner are not based on sound principles of law. ***Per contra***, learned counsel for opposite party No.2 submitted that they are not concerned with apportionment of amount among the applicants. He further submitted that under law, the wife and children of the deceased are entitled for share out of compensation amount.

9. Basing on the rival contentions, the substantial question of law that arises for consideration in this appeal is:

Whether the wife and daughter of the deceased-workman are not entitled for compensation on the ground that the applicant No.1 has

been staying separately?

Question:

10. The following facts can be culled out from the facts pleaded and proved. Tirupathi Swamy (the deceased) was working as an employee under the control of opposite party No.1 at the time of the unfortunate incident. The applicant Nos.1, 2, 3 and 4 are wife, daughter, mother and sister of the deceased respectively. The learned Commissioner dismissed the application so far as applicant No.4 is concerned. The applicant No.4 has not filed appeal challenging the finding recorded by the learned Commissioner. The finding recorded by the learned Commissioner became final dismissing the application so far as applicant No.4 is concerned.

11. A perusal of the record reveals that opposite party No.1 paid an amount of Rs.5,000/- to applicant No.1 under Ex.B1 towards funeral expenses of the deceased. A perusal of Ex.B3 reveals that opposite party No.1 paid an amount of Rs.30,000/- to applicant No.1. If really the applicant No.1 is not entitled for compensation, what prompted opposite party No.1 to pay Rs.35,000/- to her. The applicant No.2 is none other than the daughter of the deceased. As per the provisions of Hindu Succession Act, wife and daughter are Class-I heirs. There is moral and legal obligation on the part of the husband to provide maintenance to his wife and children. Even assuming, but not conceding, that applicant No.1 along with applicant No.2 has been residing separately, that itself is not a valid ground to exclude them while allotting compensation amount. I am unable to understand why the learned Commissioner has not awarded some amount to applicant No.2, who was aged about 9 months by the time of unfortunate incident. The finding of learned Commissioner that the applicant Nos.1 and 2 are not entitled for compensation is not sustainable either on facts or in law. Even under the provisions of the W.C. Act,

dependant legal representatives are entitled to claim compensation. Undoubtedly, applicant Nos.1 and 2 falls within definition of “dependant” under Section 3(d) of the Act. The learned Commissioner has not considered the provisions of the W.C. Act and apportioned the entire compensation to applicant No.3.

12. Having regard to the facts and circumstances of the case, this court is inclined to apportion the compensation amount as follows:

Applicant No.1	Rs.25,146
Applicant No.2	Rs.60,000
Applicant No.3	Rs.10,000

The order passed by the learned Commissioner is modified apportioning compensation amount to applicant Nos.1 and 2 also. There are grounds much less valid grounds to allow the appeal. The applicant Nos.1 and 2 have made ground much less legally valid ground to interfere with the order passed by the learned Commissioner. Accordingly, the question is answered.

13. In the result, the appeal is allowed in part, modifying the apportionment made by the learned Commissioner. The applicant Nos.1, 2 and 3 are entitled to compensation of Rs.25,146/-, Rs.60,000/- and Rs.10,000/- respectively. The finding of the learned Commissioner dismissing the application so far as applicant No.4 holds good. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 15.9.2015.

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