

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.2184 of 2004

JUDGMENT:

This appeal is against orders dated 27.09.2003 in W.C.No.30 of 2002 on the file of the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Eluru, wherein the lower authority granted Rs.2,20,252/- as compensation as against the claim of Rs.2,50,000/-. The appellant herein is the Insurance Company.

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

Father of the deceased and minor brother filed application before the Commissioner for Workmen's Compensation claiming a sum of Rs.2,50,000/- for the death of Rajulapati Harichandrudu, who died while working as cleaner on a lorry bearing No.AP 37V 2567 on 29.05.2002 near Pullalapadu. According to pleadings, the deceased was aged 23 years and drawing a sum of Rs.2,000/- as salary besides Rs.25/- as batta per day as on the date of accident. The insurance company resisted the claim of claimants on two grounds. Firstly, the second claimant cannot be termed as dependant during the lifetime of his father and secondly, the liability of insurance company is limited to Rs.50,000/- only. On a consideration of material on record, the Assistant Commissioner of Labour, Eluru negatived both the contentions and granted compensation. Aggrieved by the same, present appeal is preferred.

3. Heard both sides.

4. Advocate for appellant submitted that the first claimant is father of the deceased and second claimant is minor brother of the deceased. He submitted during the lifetime of father, the second claimant cannot be treated as a dependant and therefore he is not entitled for any compensation.

5. Admittedly, the first claimant father died during pendency of the workman compensation case, now the appeal is only against the minor brother.

6. Other side contended that the Assistant Commissioner of Labour by invoking Section 2(d) of the Workmen's Compensation Act, 1923 (for short "the Act"), discarded the objection of the insurance company since the minor brother is also shown as dependant in the Act. Now it will be useful to refer to Section 2 of the Act, which reads as follows:

Section 2 (d) :

'dependant' means any of the following relatives of a deceased workman, namely:

- i. a widow, a minor (legitimate or adopted) son, an unmarried (legitimate or adopted) daughter, or a widowed mother; and*
- ii. if wholly dependant on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;*
- iii. if wholly or in part dependant on the earnings of the workman at the time of his death;*
 - (a) a widower,*
 - (b) a parent other than a widowed mother,*
 - (c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter (legitimate or illegitimate or adopted) if married and a minor or if widowed and a minor,*
 - (d) a minor brother or an unmarried sister or a widowed sister if a minor,*
 - (e) a widowed daughter-in-law,*
 - (f) a minor child of a pre-deceased son,*
 - (g) a minor child of a pre-deceased daughter where no parent of the child is alive, or*
 - (h) a paternal grandparent if no parent of the workman is*

alive;

7. From a plain reading of the said provision, it is clear that a minor brother of the deceased employee is also taken as dependant, and in view of that provision, the objection of the insurance company that the second claimant during the lifetime of his father cannot be termed as dependant for the deceased employee cannot be accepted when the Act clearly mandated that a minor brother is also a dependant of the employee. The second claimant being minor brother as on the date of accident has to be treated as dependant and the lower authority rightly discarded the objection of the insurance company. In fact the lower authority by taking aid from decisions of various High Courts negated the objection of the insurance company with regard to dependency of the second claimant.

8. Now the other objection of the insurance company is that liability is limited to Rs.50,000/- only. But as seen from the order of the lower authority, this objection was negated by taking into consideration the recitals of the policy. As seen from the policy, full premium was paid, there is no condition in the policy limiting the liability therefore the limited liability contended by the insurance company cannot be sustained.

9. As seen from the impugned order, the Assistant Commissioner of Labour, took the minimum wages of a cleaner as per the Minimum Wages Act, and added VDA to it and fixed the compensation by taking the age factor of the deceased, I do not find any wrong calculation of the compensation and wrong appreciation of fact or law by the lower authority.

11. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Miscellaneous petitions, if any pending, in this appeal shall stand closed.

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