

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.2499 of 2004

JUDGMENT:

This appeal is preferred against order dated 31.01.2003 in W.C.No.176 of 2001 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, whereunder he granted compensation of Rs.2,11,790/- as against the claim of Rs.5,00,000/-.

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

Appellants, who are parents of the deceased Katuri Veera Venkata Satya Sudhakar, submitted an application to the Commissioner for Workmen Compensation contending that their son died in a motor accident that took place on 17.04.2000 while he was under the employment of 1st respondent herein on tractor trailer bearing No.AAR 1560 and 1561. They contended that their deceased son was working as driver on a monthly salary of Rs.6,000/- per month and batta of Rs.100/- per day and due to sudden death of their son, they lost their breadwinner and that the deceased was 25 years of age, hale and healthy at the time of accident and that they are entitled for a compensation of Rs.5,00,000/-.

3. Insurance Company filed counter disputing the claim of appellants, whereas, the owner remained *ex parte*.

4. The lower Authority examined one witness and marked six documents on behalf of claimants-appellants and no witness is examined but one document is marked on behalf of Insurance Company and on a overall consideration of oral and documentary evidence, the lower Authority granted Rs.2,11,790/- by taking the age of the deceased as 28 years and wages at Rs.2,000/- per month. Aggrieved by the quantum, claimants preferred the present appeal.

5. Heard both sides.

6. Advocate for appellants submitted that the lower Authority failed to take monthly wages of Rs.6,000/- in calculating the compensation and amount granted by the lower Authority is very meager. It is further contended that the deceased was hale and healthy and 25 years old as on the date of accident, but the lower Authority took the age of the deceased as 28 years, therefore, the order of the lower Authority has to be set aside.

7. On the other hand, advocate for Insurance Company submitted that the lower Authority rightly fixed the compensation and there are absolutely no grounds on the quantum fixed by the lower Authority. She further submitted, age of the deceased mentioned in the driving licence is 28 years, therefore, there is nothing wrong in taking the age of the deceased as 28 years. She further submitted though appellants contended that the deceased was getting a sum of Rs.6,000/- as salary, there

is no evidence to support their claim and the lower Authority by considering the profession of deceased, fixed the salary of deceased at Rs.2,000/- per month and the same is quite reasonable.

8. Now the point that would arise for my consideration in this appeal is:

Whether the order dated 31.01.2003 in W.C.No.176 of 2001, of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, is legal, proper and correct?

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POINT :

9. There is no dispute with regard to accident that took place on 17.04.2000, in which, driver of tractor and trailer bearing No.AAR 1560 and 1561 died. There is also no dispute with regard to relationship of employee and employer between the deceased and 1st respondent herein, the only dispute is with regard to the quantum. As seen from the record, appellants in their application contended that the deceased was getting a monthly salary of Rs.6,000/- besides batta of Rs.100/- per day. But in the evidence, they stated that the deceased was getting a monthly salary of Rs.4,000/- besides batta of Rs.100/- per day. Appellants have not examined any other person to prove the salary of the deceased-employee. As there was no positive evidence for the salary of the deceased, the lower Authority by considering

the profession of the deceased and the prevailing rates for a driver, fixed a sum of Rs.2,000/- per month as salary of the deceased. I do not find any wrong fixation of salary of the deceased and in my view, the lower Authority has rightly fixed Rs.2,000/- as salary for a driver of a tractor in the year 2000, therefore, the objection of appellants with regard to salary taken by the lower Authority for fixation of compensation cannot be sustained.

10. The other objection of appellants is that according to the evidence and pleadings, the deceased was 25 years, but the lower Authority took the age of the deceased as 28 years, thereby committed error.

11. I have perused the material papers and also evidence of AW.1. No doubt, appellants contended that the deceased was 25 years, but as per the driving licence, which is marked as Ex.A.4, the date of birth of the deceased was shown as 30.04.1972, by taking the same, the lower Authority calculated the age of the deceased and as on the date of accident he was 28 years, therefore, the objection of appellants on this score is also not tenable and the lower Authority has rightly took the age of the deceased as mentioned in the driving licence, which is a public document. For these reasons, I am of the view that the lower Authority has not committed any error in fixing the compensation and rightly applied the age, factor and also rightly fixed the monthly wages of the deceased and that there are no grounds to interfere with the

quantum fixed by the lower Authority.

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

13. Miscellaneous Petitions pending, if any, shall stand closed.

S. RAVI KUMAR, J

6th March 2015.
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