

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.3575 of 2004

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Date:17.04.2015

Between:

Shaik Hussain and another.

... Appellants.

AND

The New India Assurance
Company Limited rep by its
Divisional Manager, OPP: Z.P.
Office, Subhashnagar,
Nizamabad (Cover Note
No.HRO 187853 valid from
28.9.2001 to 27.9.2002)

...Respondent.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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JUDGMENT:

This appeal is preferred against order dated 23-09-2002 in W.C.No.5/2002 on the file of Commissioner for Workmens' Compensation and Assistant Commissioner of Labour, Nizamabad.

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

Appellants herein filed an application under Section 22 of the Workmen's Compensation Act contending that late Shaik Sharfuddin was working as Cleaner on vehicle bearing No.AP 7T 0130 and the first respondent was paying a monthly salary of Rs.5,000/- with a daily batta of Rs.100/- and on intervening night of 2/3-11-2001, while he was on duty as cleaner on the said lorry, the vehicle met with an accident due to negligent driving of the driver and as a result, the Cleaner died on the spot and the appellants being parents are entitled for compensation of Rs.5,00,000/-. Lower Authority conducted enquiry during which, one witness is examined and four documents are marked on behalf of appellants, no witness is examined and one document is marked on behalf of contesting respondents and on a over all consideration of oral and documentary evidence, lower authority granted Rs.2,00,439/- by taking the wages of the deceased at Rs.1,800/- per month and the multiplier applicable to the age group of 21 years. Now aggrieved by the said order, claimants preferred present appeal.

3. Heard arguments.

4. Advocate for appellants submitted that lower authority committed error in not taking monthly wage of the deceased at Rs.5,000/- per month when the evidence of P.W.1 is not rebutted by any other material. He further submitted that the

compensation fixed by lower authority is arbitrary and inadequate. He further submitted that the lower authority failed in granting interest on the compensation amount and for these reasons, the order of the lower authority has to be modified.

5. Learned Advocate for the Insurance Company submitted that the lower authority has rightly fixed the compensation by taking the minimum wages applicable to the cleaner as on the date of accident and that there are no grounds to interfere with the findings of the lower authority. He further submitted that with regard to interest that he would leave the matter to the discretion of the Court.

6. Now the point that would arise for my consideration in this appeal is whether the order dated 23-09-2002 in W.C.No.5/2002 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad is legal, proper and correct?

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7. **Point:-** So far as relationship of employee and employer between the deceased and first respondent herein, there is no dispute. So also there is no dispute with regard to accident that took place on the intervening night of 2/3-11-2001 in which the deceased late Shaik Sharfuddin died while working as a cleaner. The only grievance of the appellants is that lower authority as not considered the wages has spoken to by P.W.1 in determining

compensation. As seen from the record, P.W.1 deposed in his evidence that his son was working as a cleaner on a monthly salary of Rs.5,000/- with a daily batta of Rs.100/-, but the evidence of P.W.1 is not at all supported and corroborated by any other evidence. P.W.1 is no other than the father and claimant and he is naturally interested in getting more money and unless his testimony with regard to wages of the deceased is supported by any other evidence, the lower authority was right in discarding the same and taking the minimum wages for the purpose of calculating compensation. Therefore, the objection of the appellants on this aspect cannot be accepted.

7. The other objection of the appellants is that the lower authority has not granted any interest on the compensation amount. As per the decision of Hon'ble Supreme Court in **SABERABIBI YAKUBBHAI SHAIKH AND OTHERS vs. NATIONAL INSURANCE COMPANY LIMITED AND OTHERS**^[1] interest has to be granted from the date of accident till the date of deposit. So, considering the same, applicants are entitled for interest at 12% per annum from the date of accident till the date of deposit of the compensation arrived by the Assistant Commissioner of Labour. As per the Act, opposite party has 30 days time to pay the compensation.

8. In this case, as the accident was on the intervening night of 2/3-11-2001, therefore, the claimants are entitled for

interest from 02-12-2001 till date of deposit at 12% per annum. So to that extent, the order of the lower authority has to be modified.

9. Accordingly, appeal is partly allowed granting interest at 12% on the Award amount from 02-12-2001 till date of deposit. No costs.

10. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of.

JUSTICE S. RAVI KUMAR

Date:17.04.2015

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[\[1\]](#) (2014)2 SCC 298