

THE HON'BLE SMT. JUSTICE ANIS

C.M.A.NO.2393 OF 2004

JUDGMENT

This appeal is filed by the appellant – Insurance Company under Section 30 of Workmens' Compensation Act, 1923 (for short 'the Act') aggrieved by the order dated 28.5.2001 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Sangareddy, Medak District in W.C.No.17/2000 awarding compensation of Rs.1,30,140/-.

The respondents 1 to 3 herein, who are the father and brothers of the deceased, filed application claiming compensation of Rs.1,00,000/- for the death of the deceased.

The brief averments made in the application are that the deceased Mohd. Ghouse was working as cleaner under 4th respondent – owner, on lorry bearing No.AP B 8800 since two years from the date of the accident. On the date of accident on 27.1.1995, as per the instructions of the driver by name Mohd. Fareed, the deceased loaded cement in the crime lorry to transport and to unload the same at APSEB Substation godown at Sadasivpet. When the lorry reached the godown, there was another lorry, stationed in front of the godown. As such the driver of the crime lorry drove in a rash and negligent manner and took the lorry near Vikarabad road and stationed under 53/11 K.V. electric line. Due to which the deceased received electric shock to his head and was shifted to Sangareddy hospital, where he was referred to Gandhi Hospital, Secunderabad, and there he died on 30.1.1995 while undergoing treatment.

According to the claimants, the deceased was hale and healthy and was aged about 25 years and was drawing an amount of Rs.1,200/- per month as salary and Rs.30/- per day as bata and was contributing the entire salary to his family members. Therefore, the claimants, who are the legal representatives of the deceased, filed application claiming an amount of Rs.1,00,000/- under the Act.

The 4th respondent herein – owner of the crime lorry, remained ex parte before the lower authority.

The appellant – Insurance company filed counter affidavit before the lower authority before denying the allegations that the driver of the vehicle drove the vehicle in a rash and negligent manner and caused the death of the deceased and as such it is not liable to pay compensation.

On behalf of the claimants, the father of the deceased was examined as P.W.1 and got marked Exs.A-1 to A-6. On behalf of the insurer, no oral evidence was adduced and Ex.B-1 insurance policy was marked.

After considering the oral and documentary evidence on record, the authority below, awarded compensation of Rs.1,30,140/- against both the insured and the insurer. Aggrieved by the same, the insurance company filed the present appeal.

The learned Standing Counsel for the appellant – Insurance Company argued that the claimants claimed only an amount of Rs.1,00,000/-, but the authority below awarded an amount of Rs.1,30,140/-, which is more than the amount claimed and as such the excess amount has to be reduced and prayed the court to allow the appeal to the said extent.

On the other hand, the learned counsel for the claimants argued that the insurance company has not adduced any evidence to show that the accident was not caused due to the rash and negligent driving of the driver of the crime vehicle and that the deceased was not working as cleaner. He submitted that the Commissioner considering the oral and documentary evidence, awarded the just compensation and, therefore, sought to dismiss the appeal.

A reading of the evidence on record would show that P.W.1, who is the father of the deceased, clearly deposed that the deceased was working as cleaner under 4th respondent – owner on lorry bearing No.APB 8800. On the date of the accident, as per the instructions of the driver of the lorry, he loaded

the cement in the lorry to transport and to unload the same at APSEB sub station godown at Sadasivpet and when the above lorry reached the godown, there was another lorry stationed in front of the godown, as such the driver of the lorry drive the lorry in a rash and negligent manner and took the lorry near Vikarabad road and stationed under 53/11 K.V. electric line due to which the deceased received electric shock to his head and was shifted to Sangareddy Hospital, wherefrom he was referred to Gandhi Hospital, Secunderabad where he died on 30.1.1995 while undergoing treatment. The Commissioner, considering the evidence on record and as no contra evidence was lead by the insurance company to disprove the claim of the claimants, and considering the earnings and dependency, rightly awarded an amount of Rs.1,30.140/-, though the claimants claimed an amount of Rs.1,00,000/-. I do not find any reason to interfere with the same.

However, the fact remains that the claimants have to pay the court fee for the enhanced amount.

The appeal is dismissed with the above observation. No costs.

Miscellaneous petitions pending if any, shall stand closed.

AVS

26—09—2016