

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1086 OF 2008

Dated 2-6-2016

Between:

Pulikam Venkateswara Reddy and another.
_____..Appellants.

And:

Chennupati Sreenivasa Rao and another.
_____..Respondents.

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JUDGMENT:

This appeal is preferred questioning order dated 17-3-2006 in W.C.No.14 of 2004 on the file of Commissioner for Workmen's Compensation, Ongole.

The appellants herein are the parents of the deceased employee. They submitted application to the Commissioner for workmen compensation contending that the deceased employee was working as sales executive under the first respondent on a monthly salary of Rs.4,000/- and that he died while on duty and that the claimants are entitled for a compensation of Rs.5,00,000/-.

Claim was resisted by the respondent disputing the relationship of employee and employer and also their liability to pay any compensation.

The lower authority conducted enquiry during which, two witnesses are examined and five documents are marked on behalf of claimants and five witnesses are examined and two documents are marked on behalf of respondents and on an over all consideration of oral and documentary evidence, lower authority negated objection of the respondent with regard to relationship of employee and employer and granted compensation of

R.2,27,182-50ps as against the claim of Rs.5,00,000/-. Aggrieved by quantum, claimants preferred the present appeal.

Heard both sides.

Advocate for appellants submitted that the lower authority ought to have taken the salary of the deceased at Rs.4,000/- per month who was working as sales representative in Auto service at Addanki. It is further submitted that compensation granted is meager and is not just and reasonable. He further submitted that A.W.2 Co-employee supported version of the claimants with regard to salary of the deceased but the lower authority has not taken evidence of A.W.2 into consideration, for this reason, the award of the lower authority has to be modified and the compensation has to be enhanced by taking the salary of the deceased at Rs.4,000/-.

On the other hand, advocate for respondents submitted that the lower authority has rightly fixed the compensation by taking the minimum wages into consideration as there is no convincing evidence for the claim of the appellants with regard to salary of the deceased. He further submitted that there are no grounds to interfere with the findings of the lower authority.

Now the point that would arise for my consideration in this appeal is whether the order of Tribunal is legal, correct and proper?

POINT:

As seen from the record, though the respondents herein have disputed relationship of employee and employer, the lower authority on a consideration of evidence of both parties held that the deceased is an employee under first respondent herein and died during course of his employment. That finding has become final as no appeal is filed either by the employer or by the Insurance Company. Now the only dispute is with regard to quantum of compensation. According to appellants,

deceased was working on a monthly salary of Rs.4,000/- but the Commissioner for Workmen's Compensation has not accepted that salary and fixed the compensation on the basis of minimum wages. One K.Srinivasa Rao is examined as A.W.2 who deposed that he knew the deceased working as sales executive who was paid a salary of Rs.4,200/- together with fuel charges. In the cross-examination, he admitted that he do not have any record to show that he is resident of Vellampalle of Ballikurava Mandal. It was suggested to this witness that he never worked with the respondent and he was deposing false to help the claimants. Though this witness contended that he was working in the company of first respondent, he has not filed any material to show that he was employee of the first respondent particularly when opposite party disputed his status as employee. Lower authority has not accepted testimony of this witness on that account. Baring the evidence of A.W.2, there is no other evidence to prove the salary of the deceased and claimants have not taken any steps to get the records of first respondent summoned to substantiate their version that the deceased was drawing a salary Rs.4,000/- per month. Nothing prevented claimants i.e., appellants herein to invoke the provisions to get the salary particulars of the deceased summoned in order to show that deceased was drawing a salary of Rs.4,000/- per month. In the absence of any such evidence, the only option available to the Commissioner for Workmen's Compensation is to consider the minimum wages as fixed by the Government. So, the Commissioner for Workmen's Compensation took the minimum wages as fixed under G.O.Ms.No.33 W.D.C.W.& L (Lab-II), dated 6-3-1991 and fixed the compensation on the basis of such minimum wages.

I do not find any wrong in the approach of the Commissioner for Workmen's Compensation in taking aid

of minimum wages for the purpose of fixing compensation when there is no acceptable evidence for the salary of the deceased as claimed by the appellants. This is the only grievance of the appellants with regard to the quantum of compensation.

Considering the material on record, I am of the considered view that lower authority has not committed any error in fixing compensation and in taking the minimum wages for the purpose of calculation.

For these reasons, I am of the view that there are no merits in the appeal and the same is liable to be dismissed.

Accordingly, this appeal is dismissed. No costs.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 2-6-2016
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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