

.HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1544 of 2008

Dated 17-3-2016

Between:

The Divisional Manager, National Insurance
Company Limited, (B.O. Proddatur), Divisional Office,
Subash Road, Ananthapur.

..Appellant.

And:

Kommaddi Ghouse Peer and others.

..Respondents.

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JUDGMENT:

This appeal is preferred against award dated 8-8-2008 in W.C.No.137 of 2005 on the file of Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Kadapa.

Respondent No.1 herein submitted application to Commissioner for Workmen Compensation claiming compensation of Rs.7,36,000/- contending that he was under employment of 2nd respondent herein as a driver on lorry bearing No.AP04 U 0414 on a salary of Rs.4,000/- per month and that he sustained compound fracture to his left leg and other bleeding injuries during course of employment on 14-4-2005 and that they are entitled for compensation.

This claim was opposed and Insurance Company contended that applicant has to prove strictly that he sustained compound fracture to his left leg and other bleeding injuries in an accident on 14-4-2005 during course of employment and they further contended that injured was not an employee working as driver on a lorry

bearing No.AP04 U 0414. They also contended that applicant has not issued any statutory notice and prayed for dismissal of claim.

On these contentions, lower authority conducted enquiry during which, A.W.1 is examined and Exs.A.1 to A.4 are marked on behalf of claimant and no witness is examined and no document is marked on behalf of insurance Company. On an overall consideration of oral and documentary evidence, the lower authority granted Rs.1,62,854/- besides stamp duty of Rs.1472/- by taking wages of injured at Rs4,000/-. Aggrieved by the same, present appeal is preferred.

Heard both sides.

Advocate for appellant submitted that there is no basis for the lower authority to fix the wages of the deceased at Rs.4,000/- and the lower authority erred in not taking aid of G.O.Ms.No.30 which fixed minimum wages. It is further submitted that lower authority has not followed the rule of law while fixing compensation and the award is liable to be set aside.

On the other hand, advocate for claimant supported the order of the lower authority and submitted, for any reason, wages taken by the lower authority are found incorrect, the minimum wages as suggested by Insurance Company has to be taken and on that basis compensation has to be calculated.

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

POINT:

There is no dispute with regard to injuries sustained by the claimant on 14-4-2005 in the accident. Though Insurance Company contended that deceased was not under the employment of 2nd respondent herein and the same is not proved by any material evidence. On the other hand, evidence on record would clearly establish

that the injured was under the employment of 2nd respondent herein as driver and he sustained injuries during course of employment. Therefore, the objection of Insurance Company on this score is not tenable.

The other contention of Insurance company is that lower authority has fixed wages of deceased at Rs.4,000/- without any basis.

As seen from the record, claimant contended that injured was earning Rs.4,000/- per month. Admittedly, no evidence is produced before the lower authority in respect of wages that are being paid to injured by 2nd respondent herein. The lower authority has fixed Rs.4,000/- as wages and no reasons are given as to how it arrived at that figure. As rightly pointed out by advocate for appellant, when there is no material on record to support the wages, lower authority ought to have taken the minimum wages that are fixed by the Government for the purpose of calculating compensation.

Learned advocate submitted that G.O.Ms.No.30 Labour, Employment & Training (Lab-II) Department, minimum wages fixed for driver is only Rs.3,931/-. The correctness of this G.O. is not disputed by other side and therefore, considering the facts and circumstances of the case and evidence on record, I feel that objection of Insurance Company with regard to wages taken by the lower authority is right and wages of injured have to be reduced from Rs.4,000/- to Rs.3,931/-. Now compensation has to be calculated by taking wages as Rs.3,931/-. If a calculation is made on that basis, it comes to Rs.1,60,045/-. $(3,931/- \times 60/100 \times 40/100 \times 169.64)$. Thus the claimants are entitled for this amount as compensation and the award of the lower tribunal is modified accordingly and appeal is partly allowed. No costs.

As a sequel to the disposal of this appeal, the

Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE

S.RAVI KUMAR

Dated 17-3-2016

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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