

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.242 of 2009

JUDGMENT:

This appeal is preferred against order dated 08.06.2006 in W.C.No.22 of 2005 on the file of Commissioner for Workman's Compensation and Assistant Commissioner of Labour, Karimnagar (for short, 'lower Authority').

2. Respondent Nos.1 to 3 submitted application to the lower Authority alleging that deceased Jakku Sammaiah was employed by 4th respondent herein as unskilled labour on monthly wage of Rs.2,700/- and he was in the employment of 4th respondent from 01.04.1999 till the date of accident i.e., on 06.08.2004. They contended that on the fateful day i.e., on 06.08.2004 on instructions of 4th respondent herein, the deceased workman was going to Veeraswamy Workshop, Kothapalli, Jammikunta, to fetch the repaired machine tools and at about 7.30 p.m. while he was crossing LC 21 of Jammikunta, he was hit by Navjeevan Express train and sustained injuries and succumbed to injuries on the way to hospital and that they are entitled for a sum of Rs.2,50,000/- as compensation. Fourth respondent herein filed written statement admitting that deceased was employed by him on a monthly wage of Rs.2,700/- and that there is insurance policy covering the liability of 40 employees working under him and the

policy was valid for the period from 25.06.2004 to 24.04.2005, therefore, Insurance Company alone is liable to pay the compensation. Insurance Company-appellant herein filed written statement disputing the allegations in the claim petition. Lower Authority conducted enquiry, during which two witnesses are examined and six documents are marked on behalf of claimants, one witness is examined and one document is marked on behalf of 4th respondent herein and one witness is examined and three documents are marked on behalf of appellant herein. On a consideration of oral and documentary evidence, lower Authority granted compensation of Rs.2,51,392/- to claimants and aggrieved by the same, Insurance Company preferred the present appeal.

3. Heard arguments.

4. Advocate for appellant submitted from the evidence on record, it is clear that the deceased after finishing his work while going home on 06.08.2004, on the way he met with an accident, therefore, the same cannot be treated as during course of employment. He further submitted that claimants have not produced any appointment order and there is no evidence to show that there is relationship of employee and employer between the deceased and 4th respondent herein. He further submitted that inquest report would also show that the deceased while going to

home after finishing his day's work met with accident and these aspects were not properly considered by the lower Authority and wrongly fixed the liability on the Insurance Company, therefore, the order of lower Authority is liable to be set aside.

5. On the other hand, advocate for claimants submitted that lower Authority considering the fact that going home after finishing work is also part of duty and applied principle of notional extension of time of employment and rightly granted compensation and that there are no grounds to interfere with the order of lower Authority.

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

Whether the order dated 08.06.2006 in W.C.No.22 of 2005 on the file of Commissioner for Workman's Compensation and Assistant Commissioner of Labour, Karimnagar, is legal, proper and correct?

POINT :

7. The main contention of Insurance Company is that claimants have not produced any appointment order to show that the deceased was an employee under the 4th respondent herein and that there is relationship of employee and employer between them. But, as seen from the record, one of the co-worker is examined as PW.2, who categorically stated that deceased is also a

worker under 4th respondent since about four years and his evidence is further supported and corroborated with the evidence of RW.1, who is examined on behalf of 4th respondent herein. It is clear from the evidence on record that on 06.08.2004 the deceased was entrusted with the work of going to workshop of Veeraswamy and that the deceased after going to that workshop while going home met with accident while he was crossing the railway track. Insurance Company raised the very same objection before the lower Authority that the deceased cannot be treated as on duty at the time of incident as he finished the work and going home. Lower Authority after referring to judgments of various Courts discarded the objection of Insurance Company and applied principle of notional extension of time of employment and granted compensation. I do not find any wrong in the approach of lower Authority in applying the principle of notional extension of time of employment, this being a beneficial legislation. From the evidence it is clear that policy was in force as on the date of accident and 4th respondent took policy covering liability of 40 workmen and as the policy was in force, lower Authority fastened liability on the Insurance Company. The other argument of advocate for appellant is that claimants claimed only Rs.2,50,000/-, but lower Authority granted Rs.2,51,392/-, therefore, the order is not legal. But, the said submission of Insurance Company cannot be accepted as it is well settled law in

case of claims under accidents even though the claimants have made lesser claim, the Tribunal or Authority has power to grant just compensation by taking the facts of the case is the principle as per judgments of Hon'ble Supreme Court. Here, as seen from the record, lower Authority calculated the compensation by taking the wages of the deceased with the age factor applicable to him and on such calculation, the amount is arrived at Rs.2,51,392/-. Therefore, there is nothing wrong in granting higher compensation than the amount claimed by legal representatives of the deceased. The other contention of Insurance Company is that the lower Authority granted interest on the compensation though there is no provision in the Act. But, as seen from the order, the lower Authority granted interest by relying on the judgment of this Court, there is nothing wrong in the approach of the lower Authority in applying the principle laid down by this Court for grant of interest. On a scrutiny of the material, I am of the view that the grounds raised by the Insurance Company are not at all tenable and there are absolutely no merits in the appeal, therefore, the same is liable to be dismissed.

8. Appeal is dismissed accordingly.

9. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

10th August 2016.

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