

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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CIVIL MISCELLANEOUS APPEAL.NO.819 OF 2005

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JUDGMENT:

The second respondent/Insurance Company in W.C.27 of 2003 filed this appeal under Section 30 of the Workmen's Compensation Act, 1923 (henceforth for short referred to as 'the Act'), challenging the award passed by the Commissioner for Workmen's Compensation Act (Asst. Commissioner of Labour, Circle-I, Visakhapatnam), awarding total compensation of Rs.2,31,752/- for the untimely death of the Botta Yasu, while he was working as a loading and unloading labourer.

It is the case that Botta Yasu had worked as a loading and unloading labourer in the lorry bearing No.AIV-1177 belonging to V. Ramu/first respondent. On instructions of his employer/ first respondent, the deceased along with other labourers Botta Chinna Rao, Nammi Tatababu, Nammi Akku Naidu and Nammi Appala Suri went to work at Govada in the said lorry on 07.02.2003 and at about 03.30 AM, when they reached Lingalu turning down near China Bangaru Village, the driver drove the vehicle in rash and negligent manner, as a result of which the lorry turned turtle and while all the labourers in the lorry received serious injuries, Botta Yasu died on the spot.

The age of the deceased Botta Yasu was 19 years at the time of death and on account of untimely death of Botta Yasu, his parents lost financial support, besides losing love and affection towards their son and they filed claim before the Commissioner appointed under the Workmen's Compensation Act, 1923, claiming compensation of Rs.3,37,830/- under various heads.

The lorry was insured with the appellant herein, covering the risk of three passengers and the period of risk was covered the date of

accident i.e. from 05.03.2002 till midnight of 04.03.2003. Thus, by the date of accident, the liability of the insurance company i.e. the appellant herein was subsisting. Therefore, the claimants i.e. the parents of the deceased Botta Yasu claimed relief against the owner of the lorry V. Ramu, the first respondent and the insurer of the vehicle, the insurance company to indemnify the loss that caused to the claimants on account of instantaneous death of their son Botta Yasu in the accident.

The appellant herein/second respondent filed counter denying the relationship of an employee and employer between Botta Yasu and the owner of the lorry V. Ramu and also denied the wage of the deceased. The second respondent called upon the petitioner to prove that the occurrence of accident was due to rash and negligent act of the lorry driver and it is also prayed before the Commissioner that they are not liable to pay any compensation as claimed by the petitioners, which is on higher side and prayed to dismiss the petition.

During enquiry, on behalf of the applicants, A.W-1 was examined and exhibits Ex.A-1 to A-6 were marked. On behalf of the respondents, no witness was examined and no documents were marked.

Upon hearing argument of both the counsel, the Commissioner appointed under the Act accepted that there was relationship between the owner and labourer i.e. V. Ramu and Botta Yasu. Further, the Commissioner considered the wage of the deceased at Rs.2,057/- which is minimum wage by the date of his death, as per G.O.Ms.No.30 of LET&F (Lab-II) Department Dated 27.07.2000 for the labourer in a public motor transport employment and multiplied the same and awarded an amount of Rs.2,31,752/- as compensation under various heads.

Challenging the award of compensation passed by the Commissioner, the second respondent preferred the present civil miscellaneous appeal on various grounds contending that the

multiplier applied to the age group of the deceased is erroneous and the Commissioner failed to consider the same in terms of Ex.A-4-Certificate of Insurance, thus, awarded higher compensation and prayed to set-aside the same.

During hearing the learned counsel for the appellant, it is contended that the policy covered only risk of three passengers and the appellant paid compensation to four other injured persons to whom Rs.8,000/- each was awarded and further contended that the appellant is not liable to pay compensation to the fifth person who is not covered by the policy.

Learned counsel for the respondent totally supported the award passed by the Commissioner.

Considering rival contentions and perusing the material available on record, the point that arise for consideration is **“whether the appellant is liable to pay compensation of Rs.2,31,752/- to the parents of deceased Botta Yasu, in view of the terms and conditions of the Act, i.e. certificate of insurance marked as Ex.A-4, if not, at what rate?”**

In fact, the Commissioner awarded only Rs.2,31,752/- towards compensation, as the deceased Botta Yasu was aged 19 years working as labourer is established by evidence on record and he was entitled to draw minimum salary of Rs.2,057/- as per G.O.Ms.No.30 of LET&F (Lab-II) Department dated 27.07.2000. In the absence of proof of wage, the Commissioner is expected to take into consideration the minimum wage of the labourer by following the G.O.Ms.No.30 of LET&F (Lab-II) Department dated 27.07.2000. Therefore, wages taken into consideration by the Commissioner of Labour is in accordance with the government order only. The deceased was only 19 years and for the age group of 19 years, the factor applicable is $2,057 \times 50 / 100 \times 225.20$, as the wage. Thus, on calculation compensation came to Rs.2,31,752/-. Therefore, the assessment of loss to the claimants i.e. parents of the deceased Botta Yasu and

awarding compensation at Rs.2,31,752/- is in accordance with law.

The main contention of the learned counsel for the petitioner is that the insurance company is liable to pay compensation to three persons since the Certificate of Insurance A-4 covered the risk of three passengers only. The deceased Botta Yasu was a labourer engaged in connection with the operation of the lorry for loading and unloading of the goods in the lorry. Merely because the appellant paid compensation to the other four injured, they cannot avoid liability to pay compensation to the deceased, in view of the statutory liability under the provisions of the Motor Vehicles Act. Even according to the law laid down by the Supreme Court in **National Insurance Co.Ltd. v.**

Anjana Shyam and Ors^[1], the Insurance Company has to discharge the awards in passing the order from highest to lowest to the claimants. But, instead of following the principle laid down by the Supreme Court in the above judgment, the appellant wanted to circumvent the law, to take advantage of the payment of amount of compensation awarded to the injured persons.

Workmen's compensation act is welfare legislation and the appellant cannot be allowed to circumvent the law laid down by the Supreme Court. The Commissioner rightly awarded compensation and directed the appellant to pay compensation within the time fixed by the Commissioner and the award is strictly in accordance with law laid down by the Supreme Court referred to supra.

In view of the law laid down by the Apex Court, I find no illegality in the award passed by the Commissioner warranting interference of this Court. Hence, the appeal deserves to be dismissed. Accordingly, the point is answered against the appellant and in favour of the respondents.

Hence, the appeal is dismissed, confirming the award passed by the Commissioner in W.C.27 of 2003.

Consequently, miscellaneous applications pending if any shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:21.07.2016

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[\[1\]](#) 2007 ACJ 2129