

.HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1543 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.

-
-

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1543 of 2008

JUDGMENT:

This appeal is preferred against award dated 8-8-2008 in W.C.No.138 of 2005 on the file of Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Kadapa.

Respondents 1 to 3 herein submitted application to Commissioner for Workmen Compensation claiming compensation of Rs.3,92,000/- contending that deceased K.Subhan was under employment of 4th respondent herein as a cleaner on lorry bearing No.AP04 U 0414 on a salary of Rs.3,500/- per month and that the said Subhan died during course of employment on 14-4-2005 and that they are entitled for compensation.

This claim was opposed and Insurance Company contended that applicants have to prove strictly that the deceased died in an accident on 14-4-2005 during course of employment and they further contended that deceased was not an employee working as cleaner on a lorry bearing No.AP04 U 0414 and he was travelling as gratuitous passenger in the said vehicle. They also

contended that applicants have 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 claimants 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.3,01,243/-besides stamp duty of Rs.784/- by taking wages of the deceased at Rs.2,705-25ps. 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 wages of the deceased at R.2,705-25ps and the lower authority erred in not taking aid of G.O.Ms.No.30 which prescribe 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 claimants supported the order of the lower authority and submitted that, 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 death of Subhan on 14-4-2005 in the accident. Though Insurance Company contended that deceased was not under the employment of 4th respondent herein and he was only a gratuitous passenger and the same is not proved by any material evidence. On the other hand, evidence on record would clearly establish that Subhan

was under the employment of 4th respondent herein as cleaner and he died 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.2,705-25ps without any basis.

As seen from the record, claimants contended that deceased was earning Rs.3,500/- per month. Admittedly, no evidence is produced before the lower authority in respect of wages that are being paid to the deceased by 4th respondent herein. The lower authority has fixed Rs.2,705-25ps 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 cleaner only Rs.2,429/-. 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 deceased have to be reduced from Rs.2,705-25ps to Rs.2,429/-. Now compensation has to be calculated by taking wages as Rs.2,429/-. If a calculation is made on that basis, it comes to Rs.2,70,481/- ($2,429/- \times 50/100 \times 222.71$). 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

CIVIL MISCELLANEOUS APPEAL No.1543 of 2008

Dated 17-3-2016

Dvs