HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.1126 OF 2008

Dated 4-4-2016

Between:

The New India Assurance Co., Ltd., represented by its Divisional Manager, Divisional Office, Railway Station Road, Kurnool, Kurnool District.

..Appellant.

And:

Sri Vislavath Tikya Naik and others.

..Respondents.

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JUDGMENT:

This appeal is preferred questioning the order dated 31-12-2004 in W.C.No.9 of 2002 on the file of Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour, Mahaboobnagar.

Respondents 1 and 2 herein submitted application to Commissioner for Workmen's Compensation contending that the deceased Hanmanthu Naik was under the employment of third respondent herein as a driver on zeep bearing No.A.P-22-D-7245 and that on 21-5-2001, at about 5.15p.m., the deceased left Mahaboobnagar to go to Raju Naik Tanda, Keshavapur village and when the zeep crossed the road, deceased lost control of the steering and the vehicle turned turtle, as a result, he sustained grievous injuries and died on the spot. It is contended that claimants are dependants on the earnings of deceased and they prayed for a sum of Rs.4,00,000/- as compensation.

The claim was resisted on the ground that the age and earnings of the deceased as pleaded are not correct and there is no relationship of employee and employer between the deceased and 3rd respondent herein and that the compensation claimed is excessive.

On these contentions, lower authority conducted enquiry, during which, one witness is examined and six documents are marked on behalf of claimants and one witness is examined and three documents are marked on behalf of Insurance Company and on an overall consideration of oral and documentary evidence, lower authority has granted Rs.3,24,666/- as compensation with interest at 6% p.a., from the date of application, till realization and also by putting a condition that if the amount is not deposited within stipulated time, the Insurance company has to pay interest at 18% pa.., from the date of filing of petition, till the date of deposit of amount with penalty that may be imposed under Section 4-A (3) of W.C.Act. Aggrieved by the said order, Insurance Company preferred present appeal.

Respondents 1 to 3 in spite of service of notice, neither appeared in person nor through advocate.

Heard advocate for appellants.

It is submitted that as per transfer certificate of the deceased which is marked as Ex.B.3, deceased was only 17 years as on the date of incident, who is not entitled to possess a driving licence and as such, he was not having valid driving licence and the Insurance Company is not liable to pay any compensation. It is further stated that lower authority erred in granting interest at 18% p.a., with penalty, in case, the amount is not deposited within stipulated time and the same is contrary to the earlier para whereunder the interest is granted at 6% p.a., from the date of application, till the date of realization and therefore, the subsequent order granting 18% interest penalty has to be deleted as it is illegal and incorrect.

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

POINT:

I have perused the material on record and impugned order dated 31-12-2004.

There is no dispute with regard to accident that took place on 21-5-2001 in which driver of zeep bearing No.A.P-22-D-7245 by name Hanmanthu Naik died on the spot. The main objection of Insurance company is that the deceased was only 17 years as per the date of birth recorded in Ex.B.3 transfer certificate and there is no valid driving licence for the deceased as on the date of accident as he has not completed age of 18 years and that the Insurance company is not liable to pay any compensation. This objection was raised before the lower authority also and on behalf of Insurance company, the Assistant Administrative Officer of the Insurance Company is examined as R.W.1 and through him, this Ex.B.3 transfer certificate of the deceased has been marked and there is no whisper in the evidence of R.W.1 nor in the counter as to how the Insurance Company came to know about details of education of deceased Hanmanthu Naik. But it appears Insurance Company has appointed Investigator and through Investigator, the same came to light but the Insurance Company has not examined the investigator nor the report of investigator is filed to support and corroborate document Ex.B.3, on behalf of claimants, driving licence endorsement of the deceased was produced and marked as Ex.A.6 and the lower authority has accepted the driving licence endorsement produced by the parties and not accepted Ex.B.3 document.

I do not find any wrong in the approach of the lower authority since there is no material to show as to how the Insurance Company secured this Ex.B.3 document and the investigation with regard to the education and date of birth of the deceased is not at all placed before the lower authority. Therefore, the objection of the Insurance Company with regard to non-consideration of Ex.B.3

cannot be accepted.

The next objection of the Insurance company is that the lower authority has granted rate of interest at 18% together with penalty if the amount is not deposited within stipulated time.

Advocate for appellants submitted that this condition is unwarranted and contrary to the earlier finding wherein lower authority directed payment and interest at i6% p.a., from the date of application, till realization.

I have perused the impugned order dated 31-12-2004. As rightly pointed out by advocate for appellants, direction to pay interest at 18% p.a., and penalty is contrary to the earlier finding of the lower authority wherein only 6% p.a., interest is granted from the date of application, till realization and having recorded such finding, the lower authority cannot impose such condition without any reasons.

As seen from the order, finding of lower authority for payment of interest at 6% from the date of application, till the date of realization, is appropriate and reasonable, therefore, the subsequent direction to pay interest at 18% p.a., and penalty cannot be sustained and the same has to be deleted and modified.

Accordingly, this Civil Miscellaneous Appeal is allowed deleting condition of payment of interest at 18% together with penalty and rest of the order of the lower authority is confirmed. 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 4-4-2016

Dvs..

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Dvs