

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.784 of 2010

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Date:15.07.2016

Between:

The United India Insurance Company Ltd.,
Division Office V. Vengal Rao Nagar,
Hyderabad rep by Sri DRK Reddy,
Hyderabad.

... Appellant.

AND

Abdul Sekh and others.

... Respondents.

The Court made the following :

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JUDGMENT:

This appeal is preferred against order dated 06-08-2010 in W.C.No.84/2008 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner for Labour, Circle-I, Hyderabad.

2. Respondents 1 to 3 herein submitted application to the Commissioner for Workmen's Compensation alleging that deceased Anurual Shaik was employed under fourth respondent herein as Stringing Helper at the work site situated at Gouripuram near SS.5 transformer and that on 11-01-2008, at about 4:00 P.M., while the deceased was on duty,

he was stringing the wires to the pole, he accidentally fell from top of the electrical pole, which resulted in head injury and he was immediately shifted to KGH Hospital, where he died on 13-01-2008 at about 11:40 P.M., and that they are entitled for compensation of Rs.5,00,000/-. They also contended that the deceased was getting wages of Rs.3,500/- per month and aged about 24 years as on the date of the incident. Fourth respondent herein filed counter admitting that deceased was his worker and that he was being paid Rs.3,500/- per month as wages. Insurance Company filed counter disputing the claim of the claimants and mainly contended that as per the conditions of the policy, the insured has to settle the claim of dependants and then seek to recover the amount from the insurance company. They also disputed the relationship of employee and employer between the deceased and fourth respondent herein so also the accident dated 11-01-2008. They further contended that they did not admit the wages as claimed so also the compensation. On these contentions, lower authority conducted enquiry during which, one witness was examined four documents were marked on behalf of the claimants and one witness was examined on behalf of fourth respondent herein and one witness was examined on behalf of Insurance Company and got marked Exs.B1 to B6. On a over all consideration of oral and documentary evidence, lower authority granted a total sum of Rs.3,83,586/- as compensation by taking the wages of the deceased at Rs.3,500/- per month. Aggrieved by the same, Insurance Company preferred the present appeal.

3. Heard arguments.

4. Advocate for appellant submitted as per the policy conditions, the policy was taken for six unskilled workers and 14 semi-skilled workers showing their wages at Rs.3,000/- each and therefore, lower authority is not right in taking wages at Rs.3,500/- per month and compensation has to be recalculated by fixing wages at Rs.3,000/- per month. He further submitted that the insured has not produced any registers to support his

statement that Rs.3,500/- was paid to the deceased as wages. He submitted that R.W.1 admitted in his cross-examination that he has not produced the wage register or any other document in proof of the wages. He further submitted that the lower authority erred in taking wages at Rs.3,500/- per month and that the award of the lower authority has to be modified by calculating the compensation by taking wages at Rs.3,000/- per month.

5. On the other hand, Advocate for claimants and advocate for fourth respondent submitted that the lower authority has rightly taken wages at Rs.3,500/- per month as per the evidence of A.W.1 and R.W.1 and that there are no grounds to interfere with the findings of the lower authority.

6. Now the point that would arise for consideration in this appeal is whether order of the Court below is proper, legal and correct?

7. **Point:-**It is the specific case of claimants that on 11-1-2008, the deceased Anural Shekh received injuries while he was on duty under the fourth respondent herein and died due to the said injury on 13-01-2008 while undergoing treatment. One of the claimant i.e., father of the deceased was examined as A.W.1 and he reiterated the petition averments and through him, F.I.R., inquest report, Postmortem Certificate and death certificate were marked as Exs.A1 to A4. Employer was examined as R.W.1 and he deposed that the deceased worked under him as a helper and that the deceased was paid a monthly salary of Rs.3,500/- per month and that he died while on duty. He stated that as there is a valid insurance policy, the insurance company is liable to pay compensation.

8. No doubt, in the cross-examination, he stated that he has not brought the particulars of the semi-skilled and skilled employees working with him so also he has not brought the registers for their wages. He

denied the suggestion that deceased was not paid the wages at Rs.3,500/- per month. He further stated in the cross-examination that he verified the particulars pertaining to the wages of the deceased and on that basis, he stated that it is Rs.3,500/- per month. On behalf of the insurance company, R.W.2 was examined and when he was cross-examined on behalf of fourth respondent herein, R.W.2 admitted that the deceased was covered under the policy. He also admitted that fourth respondent has informed them about the incident and stated that they are not disputing the incident and coverage. Considering this part of evidence, the lower authority has granted compensation by taking the wages at Rs.3,500/- per month. In view of the specific admission of R.W.2 that the policy also covered the risk of the deceased, contention of the insurance company that wages have to be limited for Rs.3,000/- per month as per the policy and the premium paid, cannot be accepted. Further as seen from the record, both parties have not produced any material to show as to the minimum wages prescribed for skilled worker and unskilled worker as on the date of incident. So in the absence of any such material, evidence of R.W.1 which is supported with the version of the claimants with regard to wages cannot be discarded and the lower authority has rightly taken Rs.3,500/- per month as wages in calculating the compensation.

9. For these reasons, I am of the view that lower authority has not committed any error in appreciating evidence and in taking wages at Rs.3,500/- per month and that the appeal is devoid of merits and liable to be dismissed.

10. Accordingly, appeal is dismissed as devoid of merits and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed. No costs.

JUSTICE S. RAVI KUMAR

Date:15.07.2016

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