

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.1562 of 2008

Date:09.06.2016

Between:

Kancharagunta Munuswamy

... Appellant.

AND

Shaik Zeelani Basha and another.

... Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.1562 of 2008

JUDGMENT:

This appeal is preferred against order dated 07-08-2003 in W.C.No.50/2002 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ongole.

2. Appellant herein submitted application to the Commissioner for Workmen's Compensation alleging that he was cleaner of vehicle bearing No.AEN 5056 belonging to first respondent and on 25-10-2002, lorry was loaded with Urea Bags at Doddavarappadu and proceeded to Gangavaram and while the appellant was getting into the lorry, the driver suddenly started the vehicle due to which, the appellant fell down and the left front tyre of the lorry ran over on his left leg whereby, he sustained

crush injury up to knee joint and he is entitled for compensation of Rs.2,00,000/-. He stated that he was getting monthly wages of Rs.2,000/- . The Insurance Company opposed the application and the lower authority conducted enquiry during which appellant was examined as A.W.1 and got marked Exs.A1 to A6 and no witnesses were examined and no documents were marked on behalf of the Insurance Company and on a over all consideration of oral and documentary evidence, lower authority granted compensation of Rs.1,32,526/- by taking the wages of the applicant at Rs.1,437-50 p.s., and VDA of Rs.620/- totaling to Rs.2,057/-. Aggrieved by the quantum, claimant preferred the present appeal.

3. Heard arguments.

4. Advocate for appellant submitted that the lower authority erred in taking wages at Rs.2,057/-, but in fact at the relevant point of time as per the amendment, minimum wages were between Rs.2000/- to Rs.4,000/- but lower authority granted compensation without taking into consideration the amendment to the minimum wages, which came into effect from December-2000. He further submitted that on account of injury, appellant suffered total loss and the loss of earning capacity ought to have been taken at 100%. On these grounds, appellant prayed for enhancement of compensation.

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

6. **Point:-** As seen from the record, the appeal against owner was dismissed for non-compliance of order dated 21-09-2005. No steps have been taken to get the appeal restored against R1. Now the appeal is against R2 is only i.e., insurer, the liability of insurer would arise only if the owner is liable to pay compensation to the employee. Further, according to appellant, the minimum wages taken into consideration by the lower

authority were enhanced by way of amendment, therefore, the compensation has to be modified. Appellant has not produced any material to show that the minimum wages taken by the lower authority is incorrect. Though it is contended that there was an amendment, no document is produced either before the lower authority or before this Court to show that there was amendment to substantiate the claim of the appellant for enhancement. As seen from the record, it is the specific case of the appellant, his monthly wages are only Rs.2,000/-, but the lower authority has taken Rs.2,057/- for the purpose of calculating compensation under the Minimum Wages Act. Viewed from any angle, the claim of the appellant for enhancement is not tenable and that there are no merits in the appeal.

7. For these reasons, appeal is dismissed, but under the circumstances, without costs.

8. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed. No costs.

JUSTICE S. RAVI KUMAR

Date:09.06.2016

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