

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

C.M.A.No.111 of 2006

JUDGMENT:

This is an appeal filed against the orders dated 21.08.2004 in WC Case No.6 of 2002 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1, Warangal.

The Insurance Company, which is the second respondent in the lower Court, is the current appellant. The application was filed in the lower Court by one D. Jaya, the wife and D. Rakesh, the minor son of a deceased-driver by name Mogili, who died in an accident on 24.01.2001. As per the averments of the application filed, the deceased was driving a tractor and trailer belonging to first opposite party and insured with second opposite party. The deceased was working as driver on the said tractor, when he died due to an accident arising out of and during the course of employment.

The first respondent filed a counter denying the relationship between the applicants and the deceased. He admitted that the deceased was working as driver with him and that he was being paid Rs.3,000/- per month as salary. Second opposite party denied the entire case of the applicants. The Commissioner after trial passed an order holding that the wages of Rs.3,000/- per month were proved. He also held that the accident occurred in the course of employment. Therefore, he granted compensation of

Rs.3,25,365/ with interest etc. This order is assailed in the current appeal.

It is the submission of the learned counsel for the appellant, Sri Naresh Byrapaneni appearing for the Insurance Company that as per the settled law on this aspect including the judgments of this Court itself, the minimum wages should be adopted for calculation of compensation when there is no proof of the wages. He relies upon ***the New India Assurance Co. Ltd., rep. by its Branch Manager v. Lodya Shankar and Others***¹. It is the submission of the learned counsel that the lower court erred in adopting the wages of Rs.3,000/- for which there was no evidence in this case.

On the other hand, Sri B. Narayana Reddy, learned counsel for the applicants/respondents submits that both opposite parties 1 & 2 deposed about the monthly wages of Rs.3,000/- and that therefore, the Commissioner is right in adopting the same.

It is a fact that the wages are not proved in this case even with reasonable certainty. In such cases, as per the decided case law on this point, it is necessary that the Commissioner should adopt the minimum wages payable as the wages. Therefore, the lower Court was wrong in adopting Rs.3,000/- as monthly wages and the lower Court should have followed G.O.Ms.No.30, dated 27.07.2007 for deciding the wages in this case.

¹ 2004 (3) ALD 400

The next dependent question that was argued and that arises is whether the deceased was a driver or a labourer.

The learned counsel for the appellant argues that he had raised this issue as ground No.4 in the grounds of appeal and that this Court should adopt the wages payable to a labourer and that therefore, according to him, the correct wages payable are Rs.1,437 + VDA, which comes to Rs.1,793.50. He states that in the absence of evidence that the deceased was a driver, this figure should be adopted at best and not Rs.3,000/- as wages.

However, the evidence on record shows that the deceased was working as a driver and that while he was working as a driver and was driving the tractor, he sustained injuries. PWs.1 & 2 stated that the deceased was working as driver. Contemporaneous records like FIR etc. show that there is a death of the 'driver.'

The learned counsel argues that there is no proof filed for the employment. It is a fact that there is no proof filed to show that the deceased was actually employed as a driver. In an unorganized sector, particularly in the rural areas, to expect strict proof of employment is difficult. The evidence has to be seen on a case-to-case basis and no specific rule can be laid down. In this case, there is sufficient evidence to show that the deceased workman was employed as a driver. Therefore, this Court is of the opinion that the wages of the driver as per the G.O.Ms.No.30 should be adopted in which

case, the wages would be Rs.1,874/- per month and VDA would be Rs.460/- per month (Rs.2,334/- per month). These figures were submitted across the bar based on a question posed by this Court.

Therefore, this Court is of the opinion that the Commissioner was wrong in adopting Rs.3,000/- as wages and he should have adopted Rs.2,334/- as wages for the purpose of assessing the compensation.

In the result, the Civil Miscellaneous Appeal is allowed in part and the order of the lower Court is modified to the extent that in the calculation of compensation, the monthly wages are Rs.2,334/- and not Rs.3,000/-. The other parts of the calculation are found to be correct and instead of remanding the matter for the limited purpose of calculating the wages, this Court is of the opinion that the figure Rs.2,334/- should be adopted, instead of Rs.3,000/-. Hence, calculation of the compensation payable will be $50/100 \times 2,334/- \times 216.91 = \text{Rs.}2,53,133.97$.

Miscellaneous petitions, if any, pending in this appeal shall stand closed. However, there shall be no order as to costs.

D.V.S.S. SOMAYAJULU, J

Date: 21.11.2017
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