

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

CMA No.474 of 2006

ORDER:

This is an appeal filed by the National Insurance Company Ltd., aggrieved by the order dated 01.08.2005 in W.C.No.22 of 2004 on the file of the Court of the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour at Karimnagar.

The brief facts of the case are that the deceased was employed as a driver by the opposite party on the lorry bearing No. AHH 3255 on a monthly wage of Rs.3,500/-. As per the averments in the application, the workman was on duty as a driver in the said lorry and on 13.06.2003 at 7.30 a.m. when the lorry reached Nagasamudram bridge, the workman was involved in an accident and that he died on the spot. The applicants, who were the dependants of the deceased workmen, claimed an amount of Rs.4,00,000/- towards compensation payable by first opposite party, who is the owner of the vehicle and second opposite party, who is the insurer. The first opposite party-owner filed a counter admitting the relationship of employer with the workman and the occurrence of the accident also. They, however, denied that the salary was Rs.4,000/- per month as he was only a second driver and not a first driver. The second opposite party denied all the allegations in the averments in the application. On behalf of the applicants, two witnesses were

examined and the opposite parties did not adduce any evidence whatsoever either oral or documentary. On behalf of the applicants, four exhibits were marked. After enquiry into the matter, the Commissioner for Workmen's Compensation, Karimnagar passed the impugned order, which is now under challenge.

Sri V.Sambasiva Rao, learned counsel for the appellant-Insurance Company, submits that the order of the Commissioner for Workmen's Compensation is contrary to law and that he wrongly awarded a sum of Rs.3,89,896/-. The learned counsel for the appellant strongly argued that the Insurance Company cannot be called upon to pay interest as it is an employer alone, who is liable to pay interest and not the insurer. He also argued that awarding interest at 12% is contrary to law.

After perusal of the entire record, it appears that the order passed by the lower Court is a reasoned order. P.Ws.1 and 2 deposed about the wages being earned by the deceased. The accident and the presence of deceased are not disputed. The learned Commissioner held that there is no documentary evidence to substantiate the claim of the applicants as to the wages of the workmen. He, therefore, relied upon the minimum wages payable as per the Minimum Wages Act, 1948 and the notification issued there under and came to a conclusion that the minimum wage payable in respect of a heavy vehicle driver is Rs.3,595/- as on the date of the

accident. This finding of the Commissioner is, in the opinion of this Court, a correct finding and as the other aspects are proved, the Commissioner rightly relied upon the Minimum Wages Act, 1948 to come to a conclusion about the wages payable.

As far as interest is concerned, the Commissioner also carefully heard the submissions of the learned counsel and relied upon the decision reported in **Samal Gangadhar v. Ch.Gangaram and another**¹, and section 4-A(3) (a) of the Workmen's Compensation Act, 1923 and awarded the interest.

Considering the facts and circumstances of the case, the employer/employee relationship, the accident and the wages of the deceased as per the Minimum Wages Act, denying interest would not be according to the letter and the spirit of the Act and the decisions of the Hon'ble Supreme Court of India on the subject including **Yadava Kumar v. The Divisional Manager, National Insurance Co. Ltd.**² In this case, the Hon'ble Supreme Court of India took the view that the Tribunal must take a compassionate view of things to achieve a just and equitable end result. In the case of **National Insurance Co. Ltd.Vs. Mubasir Ahmed and Anr.**³, the Hon'ble Supreme Court of India upheld the grant of interest also.

¹ 2004(5) ALD 84

² 2010(10) SCC 341

³ 2007 (2) SCC 349

In view of all of the above, this Court is of the opinion that there are no merits in the appeal and that the order of the Commissioner is valid and correct. This Court does not find any reason to interfere with the findings.

Hence, the appeal is dismissed. In the circumstances of the case, no costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date:09.11.2017
KLP

D.V.S.S. SOMAYAJULU, J

