

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

C.M.A.No.129 of 2006

JUDGMENT:

This is an appeal filed by the insurance company against the orders dated 03.08.2004 in W.C.No.30 of 2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Warangal-1.

The case of the applicant is that the lower Court wrongly awarded compensation and did not calculate the wages, as per the decision of the High Court of Andhra Pradesh and other High Courts.

The order in question is passed in an application filed by one Anumula Mondakka, the mother of the deceased employee. As per the case in the lower Court, the deceased was employed by first opposite party and while the deceased was working and discharging his duties as a labourer, on 07.07.2002 he was involved in an accident and died in the said accident. Therefore, the claim for compensation is filed.

Opposite parties 1 & 2 denied the case. First opposite party in his evidence admitted that he is the owner, but stated that he was paying Rs.3,500/- per month to the deceased and not Rs.4,500/-. Second opposite party denied the accident and the claim in its entirety.

Only one witness was examined for the applicant and Exs.A.1 to A.4 were marked. Policy of insurance was marked as Ex.B.1. The Commissioner accepted the wages in view of

the admission of the first opposite party as Rs.3,500/- per month and calculated the compensation. It is this order that is assailed in the present appeal.

Essentially the finding about the monthly wages of Rs.3,500/- is the issue raised in the present appeal.

The learned counsel for the Insurance Company/appellant, Sri Naresh Byrapaneni submits that there are a number of judgments of various High Courts including the judgment of this High Court itself including ***the New India Assurance Co. Ltd., rep. by its Branch Manager v. Lodya Shankar and Others***¹ wherein it is held that in case of absence of proof of wages, the minimum wages should be taken as the yardstick for deciding this issue.

In the case on hand, admittedly, there is no clear evidence of the wages paid to the deceased workman on the date of his death. Therefore, the minimum wages and the notifications thereunder provided a good yardstick for assessment of the wages. This is the law that has been laid down in this Court earlier.

The learned counsel for the appellant/United India Insurance Company Limited is, therefore, right in contending that the minimum wages was being paid to a Mazdoor should be adopted. The minimum wages payable as on the date of the accident as per G.O.Ms.No.30, Labour, Employment,

¹ 2004 (3) ALD 400

Training and Factories (Lab-II), dated 27.07.2000, is Rs.1,437 and the VDA payable is Rs.460/-.

Therefore, this Court is of the opinion that these figures should be used as the basis for calculation of wages. Consequently, the order of the Commissioner for Workmen's Compensation is modified to the extent that the calculation should be on the basis of Rs.1,897/-, instead of Rs.3,500/-. Therefore, instead of remanding the matter back for this limited question of calculation, this Court modifies the order passed by the Commissioner and the calculation of compensation shall be as $50/100 \times 1897 \times 216.91 = 2,05,739.135$, which is rounded off to Rs.2,05,739/-. Rest of the order is not altered or changed.

With the above direction, the Civil Miscellaneous Appeal is partially allowed. However, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 21.11.2017
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