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

C.M.A.No.906 of 2006

JUDGMENT:

This appeal is filed against the order dated 05.05.2006 passed by the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Hyderabad-I in W.C.No.26 of 2005.

The said WC is filed in the lower Court by the legal heirs of one S. Raghavan who sustained fatal injury in the course of his employment. He was working in the establishment of first opposite party for the second opposite party. The third opposite party is the insurer and the present appellant. The lower Court recorded the evidence and also marked as Exs.A.1 to A.6 for the applicants; Exs.C.1 to C.3 for the second opposite party and Exs.B.1 to B.9 for the third opposite party. After assessing the evidence and hearing the submissions. The Commissioner awarded the total compensation of Rs.2,93,871/-. Questioning the said finding, the third respondent-insurance company filed the present appeal.

Heard Sri K. Ashok Rama Rao, learned counsel for the appellant/insurance company and Sri Akkam Eswar, learned counsel for the respondents/applicants.

The essential question that was raised in the grounds of appeal and argued was: whether the third opposite party/appellant is liable to pay the entire compensation as awarded or whether as per the terms of the insurance contract, their liability is limited.

It is the submission of the learned counsel for the appellant that the policy in question (Ex.B.9) is a contract between the appellant and the insured. The learned counsel took pains to show that the premium of policy that was paid was only for 15 employees and the total premium paid was only Rs.5,311.80 paise. The learned counsel also pointed out that the annual wages per person covered was Rs.13,000/- only and if this Rs.13,000/- is divided by the total number of employees covered the average salary was only Rs.866/- per month. It is the submission of the learned counsel that this was their submission in the lower court also and that a cheque was also issued for the said amount which was rejected by the legal heirs/respondents. The original cheque is still in the records of the lower court. The documents marked in the lower court show that in the insurance policy the salary was accepted as Rs.866/- only, therefore, calculating the compensation as per the said amount of Rs.866/- per month, the policy was settled by third opposite party but the same was not accepted by the family members of the deceased.

In support of his contentions, the learned counsel for the appellant/insurance company cited a judgment reported in ***New India Assurance Co. Ltd. V. Harshadbhai Amrutbhai***

Modhiya and another[1]. The sum and substance of the learned counsels' submission based on the said judgment of Hon'ble Supreme Court is that the employer can enter into a contract with the insurance company and pay the premium according to the said contract only for the purpose of covering certain liabilities. The Supreme Court said that insurance under the Workmen's Compensation Act is not compulsory and that the employer and the insurance company can enter into a contract. The said contract has to be interpreted according to its own terms. The learned counsel derived support from this case and argued that the wages in this case were calculated as Rs.866/- per month. The learned counsel shows this Court the average annual wages per person is Rs.1,56,000/- by 12 = Rs.13,000/-. As the number of employees are 15, as per the learned counsel, the average salary per person is Rs.1300/- by 15 = Rs.866/- per month. The learned counsel submits that the amount that is offered in the lower Court was also deposited by way of cheque later.

The learned counsel for the appellant also relied upon a judgment reported in ***M. Veeranjaneyulu v. Soma Seetharamaiah and others***[2] and contends that the Commissioner cannot *suo motu* determine the quantum of indemnification unless such a question is raised by necessary pleadings and facts.

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[1] (2006) 5 SCC 192
[2] 1997 (2) ALD 602

On the other hand, the learned counsel for the respondents/applicants supported the order that was passed and argued that the impugned order is a reasonable and well thought out order which should not be interfered with.

Based on the submissions made by both the counsel, the evidence adduced the conditions of the policy and the judgment cited, this Court is of the opinion that the liability of third opposite party/appellant is limited to Rs.97,066/- only. The integrity and the sanctity of the contract are to be upheld. The appellant by its contract limited its liability. The same has to be upheld. For the balance amount under the award, opposite parties 1 & 2 are liable to pay.

In the result, the Civil Miscellaneous Appeal is allowed holding that the liability of the appellant/insurance company is limited to Rs.97,066/- only. To the said extent, the impugned order is modified and the rest of the impugned order is not interfered with. The opposite parties 1 & 2 shall honour the same, if not already honoured. 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: 05.12.2017
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