

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**CIVIL MISCELLANEOUS APPEAL No.478 OF 2003**

**JUDGMENT:**

Aggrieved over the order dated 28.11.2001 in W.C. No.5 of 2001 (F) passed by the learned Commissioner for Workmen's Compensation and Assistant Commissioner for Labour, Nalgonda, The Oriental Insurance Company Limited, Suryapet, Nalgonda District, preferred the present Civil Miscellaneous Appeal under Section 30 of the Workmen's Compensation Act, 1923.

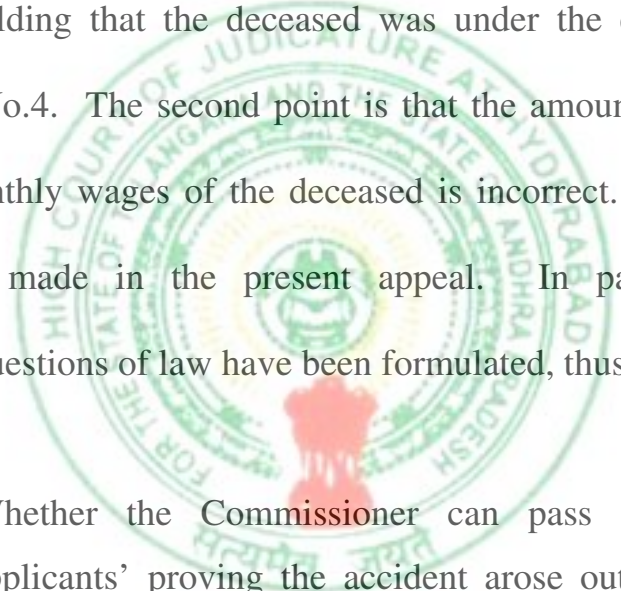
2. Heard Sri Ravi Shanker Jandhyala, learned counsel for the appellant - insurer, and Sri V. Brahmaiah Chowdary, learned counsel for respondent Nos.1 to 3 - applicants, legal heirs of Sri Ch. Sathyanarayana Reddy, who died in the accident.

3. Against respondent No.4, who is owner of the lorry bearing No.AP-16-W-466, of course, employer of the deceased, the present appeal was dismissed for default on 11.02.2011. However, since she suffered the order, dismissal of the present appeal against her has no significance to determine the issue involved herein.

4. The order under challenge would show that though, documentary proof is not filed to show occupation of the deceased, who was said to be working as cleaner on the lorry referred to above, still, the learned Commissioner, based on circumstantial evidence, declared that the deceased died while discharging duties under the

employment of respondent No.4. While answering other points, taking the age of the deceased as 32 years, his wages at Rs.2,000/- per month, age factor '221.37', arrived at Rs.2,21,370/- (Rs.2,000/- x 50/100 x 221.37) besides Advocate fee of Rs.300/- and Court fee of Rs.440/-, making a total of Rs.2,22,110/- was awarded.

5. On two main grounds, the present appeal is preferred. Firstly, there has been no employment certificate and employment of the deceased was not proved and that the learned Commissioner went wrong in holding that the deceased was under the employment of respondent No.4. The second point is that the amount of Rs.2,000/- taken as monthly wages of the deceased is incorrect. These are the submissions made in the present appeal. In paragraph No.3, substantial questions of law have been formulated, thus:

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- “a) Whether the Commissioner can pass award without applicants’ proving the accident arose out of and in the course of employment of the deceased ?
  - b) Whether the private car can have a cleaner as a paid employee or not?
  - c) Can the Commissioner decides the employee and employer relationship of the deceased and Opposite Party No.1 without there being any material documents to prove the same ?
  - d) Whether the Commissioner is right in awarding compensation of Rs.2,22,110/- ?”

6. Sri V. Brahmaiah Chowdary, learned counsel for the applicants, would not dispute in regard to statutory contribution as per G.O. Ms. No.71, which was then prevailing since G.O. Ms. No.30 replaced it from 27.07.2000, as the accident had taken place on 07.06.2000.

7. The basic wage was Rs.675/- and variable DA was Rs.900/- and thus, it works out to Rs.1,575/- per month. Certainly, to that extent, the order under challenge requires to be modified.

8. When monthly wages are taken as Rs.1,575/- for the purpose of determining compensation, it works out to Rs.1,74,329/- (Rs.1,575/- x 50/100 x 221.37) to which the applicants are entitled. The Advocate fee of Rs.300/- and the Court fee of Rs.440/- awarded by the learned Commissioner are confirmed.

9. Thus, the applicants found entitled to a total compensation of Rs.1,75,069/- (Rupees one lakh seventy five thousand and sixty nine only) and the same was accordingly granted reducing the compensation from Rs.2,22,110/- awarded by the learned Commissioner.

10. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the order under challenge by reducing the compensation, as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any,  
pending in the appeal stand closed.

**August 4, 2017.**

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**A. SHANKAR NARAYANA, J**

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