

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

Civil Miscellaneous Appeal No.679 of 2007

JUDGMENT:

This appeal is filed by the National Insurance Company Limited against the order and decree dated 27.4.2007 in W.C.No.40/2005 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Khammam.

The case is filed by one Karam China Venkateswarlu claiming compensation for the death of Karam China Veerabhadramma in an accident that occurred on 18.3.2004. The said Veerabhadramma was employed on the vehicle belonging to OP.No.1 which was insured with OP.No.2.

PWs.1 and 2 were examined for the applicants and Exs.A1 to A5 were marked. For the respondents, DW.1 was examined and Ex.B.1 policy copy was marked. After the matter was heard, the lower Court directed that both the opposite parties are liable to pay compensation of Rs.2,23,017/- vide the impugned order.

The Insurance Company filed the present appeal questioning the judgment and decree of the lower Court.

Of all the points that were urged, the learned counsel for the appellant Sri Agasthya Sarma laid stress on ground No.8 which states that Respondent No.1/applicant is an employed brother of the deceased and, therefore, he cannot be a dependant of the deceased. Learned counsel, in all fairness, conceded that in the lower Court this issue was not raised. He urges that as it is a question of law going to the very root and jurisdiction of the Commissioner to determine the case, he can raise the same now. He placed reliance on the definition of 'dependant' in section 2

clause (d) of the Workmen's Compensation Act, 1923 and points out that only if a minor brother or an unmarried sister is wholly or in part dependant on the earnings of the workmen at the time of the death, the complaint is maintainable.

Learned counsel for the appellant points out that from the cause title of the application filed it is clear that Respondent No.1/applicant was aged 23 years in the year 2005 when the application was filed. Therefore, he contends that the application is *per se* not maintainable and it should have been rejected in limini as not maintainable.

This Court finds that there is considerable force in the contention of the learned counsel for the appellant. This Court concurs with what the learned counsel for the appellant has stated and holds that Respondent No.1/applicant is not a dependant as defined under section 2 of Workmen's Compensation Act. Therefore, the application itself is not maintainable.

Hence, the judgment and decree dated 27.4.2007 passed in W.C.No.40/2005 are set aside. C.M.A. is allowed. No order as to costs. Despite notice there was no representation for the respondents.

Pending miscellaneous petitions, if any, shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date: 16/03/2018

lkv

