

HON'BLE SRI JUSTICE N.BALAYOGI

C.M.A.No.189 of 2006

JUDGMENT:

The present appeal is filed aggrieved by the order dated 14.11.2005 passed in W.C.No.214 of 2004 by the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour-I, Hyderabad, awarding compensation of Rs. 3,32,385/- and directing the employer-R1 and New India Assurance Company Limited-R2, to deposit a Demand Draft Rs.3,36,055/- obtained from any Nationalized Bank in favour of the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour-I, Hyderabad, within thirty (30) days of receipt of the order, so as to enable him to take further appropriate action in the matter.

02. Learned counsel appearing for the appellants contends that the Commissioner ought to have taken the salary of the deceased-K.Shankaraiah at Rs.4,000/- + Rs.50/- towards batta per day, as no rebuttal evidence was produced by respondents 1 and 2 to disprove their contention, which is contrary to law. He further contends that the Commissioner has not apportioned the awarded amount between the appellants and the 3rd respondent. He also contends that the Commissioner has not awarded any amount towards funeral expenses as contemplated under Section 4 (4) of the Workmen's Compensation Act, 1923 (for short 'the Act') and

ought to have awarded 12% interest on the awarded amount of Rs.3,36,055/-.

03. Per contra, learned Standing Counsel appearing for the 2nd respondent contends that Section 4-A deals with interest and penalty, which can be awarded by the Commissioner in case of delay in deposit as directed by the Commissioner.

04. Now the point of consideration is: “whether the order passed by the Commissioner in W.C.No.214 of 2004 suffers from with any legal infirmity or not?”

05. The facts of the case are that the deceased-K. Shankaraiah was employed by the 1st respondent as Cleaner on DCM Van bearing No.AP-11-U-6828. While so, in furtherance of his employment, while the deceased-K.Shankaraiah was proceeding in the said van in connection with the business of the 1st respondent, the driver of the said van drove the same in a rash and negligent manner, dashed against another lorry bearing No.AP-25-T-217, on its behind, near Bhongir, Nalgonda District, in which, the deceased-K.Shankaraiah sustained grievous injuries all over his body and died on the spot.

06. Before the Commissioner, AW1 was examined and Exs.A1 to A5 were marked. No witnesses were examined on behalf of the respondents, but Ex.B1 was marked on behalf of the 2nd respondent-Insurance Company.

07. The evidence of AW1 clearly goes to show that the deceased-K.Shankaraiah was employed by the 1st respondent on DCM Van

bearing No.AP-11-U-6828 and the driver of the said DCM Van drove the same in a rash and negligent manner and dashed against the lorry bearing No.AP-25-T-217, which resulted the said Shankaraiah sustained grievous injuries and succumbed to injuries on the spot. In Ex.A1-Certified copy of the FIR, it is specifically mentioned that Shankaraiah was the cleaner on DCM van bearing No.AP-11-U-6828, and the driver of the said vehicle drove the same in a rash and negligent manner, due to which the said Shankaraiah succumbed to injuries. It is also clear from Ex.A2-Charge sheet that lorry bearing No.AP-25-T-217 was returning to Hyderabad with paddy husk load, and the same was stationed at Gudur Village and while checking the air in tyres, the driver of the DCM van bearing No. AP-11-U-6828 drove the same in a rash and negligent manner, dashed against the stationed lorry on its rear side, which resulted the cleaner-K.Shankaraiah, sustained grievous injuries and died on the spot.

08. In Ex.A3-inquest report, it was mentioned that the driver of the DCM Van drove the same in a rash and negligent manner and hit the stationed lorry on its behind due to which cleaner-K.Shankaraiah succumbed to injuries. In Ex.A4-Post Mortem report, the Doctor opined that the cause of death of said K.Shankaraiah was due to Hemorrhagic shock secondary to multiple injuries. A perusal of Ex.A5, the Motor Vehicles Inspector inspected the said DCM van bearing No. No.AP-11-U-6828 on 23.09.2004 at 2.00 P.M at Bibinagar Police Station and

opined that the accident was not due any mechanical defect. In Ex.A1-FIR, Ex.A2-Charge sheet and Ex.A3-Inquest report, it is specifically mentioned that the deceased-K.Shankaraiah was aged 23 years, appointed by the 1st respondent as Cleaner on DCM van bearing No.AP-11-U-6828. Absolutely there is no rebuttal evidence to the evidence of AW1 and the documentary evidence Exs.A1 to A4 clearly established that the deceased-K.Shankaraiah was appointed by the 1st respondent as Cleaner of the DCM Van, which involved in the said accident occurred on 21.09.2004, in which he sustained grievance head injury and succumbed injuries and died on the spot itself.

09. Based on the material facts and appreciation of both oral and documentary evidence, the Commissioner came to the conclusion that the said deceased-K.Shankaraiah was appointed by the employer-1st respondent as a cleaner on DCM van bearing No.AP-11-U-6828 and during course of his employment, the driver of the DCM Van drove the vehicle and dashed against the stationed lorry bearing No.AP-25-T-217, as a result of which, said K.Shankaraiah, cleaner, sustained grievous injuries and died on the spot. At the time of accident, the DCM Van was returning to Hyderabad with load of Vegetables and the said K.Shankaraiah died while he was on duty when the accident occurred. The Commissioner based on oral and documentary evidence, came to the conclusion that the applicant has not adduced any documentary evidence in support of her averment and deposition

as to the monthly wage of the deceased-K.Shankaraiah and the matter attracts the provision of Section 4 (1-A) of the Act. According to the provision of the Act, the amount of compensation, where death results from the injury, shall be equal to fifty percent of the monthly wages of the deceased workman multiplied by the relevant factor, or rupees eighty thousand, whichever is more.

10. In the facts and circumstances discussed above, I am of the considered view that the applicant has not produced any documentary evidence in support of her contention that the monthly wage of the deceased-K.Shankaraiah was Rs.4,000/- besides Rs.50/- batta per day. Therefore, the Commissioner fixed the wages of the deceased K.Shankaraiah as the minimum wage fixed by the Government of Andhra Pradesh for the category of 'cleaner', Rs.1,437/- towards basic and Rs.840/- towards VDA and determined the monthly income of the deceased at Rs.2,277/-.

11. As already discussed, the applicant did not file any proof with regard to the age of the deceased-K.Shankaraiah as mentioned in Ex.A1-FIR, Ex.A2-Charge sheet, Ex.A3-Inquest report. Therefore, the Commissioner has taken the age of the deceased as 23 years as on the date of his death i.e., on 21.9.2004 and the relevant factor for his age in Schedule IV is 219.95. The amount of compensation payable under the Act is $50/100 \times 2277/1 \times 219.95/1 = \text{Rs.}3,32,385/-$. The Commissioner also awarded Rs.2,500/- under Section 4 (4) of the Act towards funeral

expenditure, Rs.670/- towards court Fee and Rs.500/- towards Advocate fee. Therefore, the contention of the appellants that the Commissioner did not award any funeral expenses has no legs. Ex.B1 policy issued by the 2nd respondent is in force, with effect from 21.11.2003 to 20.11.2004, whereas the accident occurred on 21.09.2004. Ex.B1 policy is in force as on the date of death of deceased-K.Shankaraiah. By virtue of Ex.B1, the 2nd respondent-insurance company is liable to identify the liability of the R1. Therefore, the Commissioner having considered the provision under Section 3 of the Act and also Ex.B1 policy came to the right conclusion that the 1st respondent being the employer, is primarily liable to pay the compensation and the 2nd respondent by virtue of Ex.B1 is liable to pay. Accordingly, held both respondents 1 and 2 are jointly and severally liable to pay the compensation.

12. Learned counsel appearing for the appellants contends that no interest is awarded on the compensation.

13. Section 4-A of the Act deals with Compensation to be paid when due and penalty for default:

- (1) compensation under section 4 shall be paid as soon as it falls due.
- (2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the official Gazette, on the amount due.

Therefore, it is the Commissioner to determine and direct the employer to pay the interest in default of the deposit.

14. Learned counsel appearing for the appellants reported that they have no idea whether the compensation amount is deposited or not.

15. In such circumstances, it is left open to the Commissioner to determine/decide the interest payable under Section 4-A of the Act.

16. Further, it is the contention of the appellants that the compensation amount is not apportioned between the appellants and respondent No.3 as per Section 8 of the Act.

17. Relevant provision for distribution of compensation is sub-section 4 of Section 8, which reads as under:

“On the deposit of any money under sub-section (1), (as compensation in respect of a deceased workman), the Commissioner (xxx) shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall

repay the balance of the money to the employer by whom it was paid.

The commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

The object of Section 8 is to protect the legal representatives of the deceased.

18. In the facts and circumstances of the case, I am of the considered view that the Commissioner for Workmen's Compensation, after appreciating both oral and documentary evidence, came to the right conclusion and awarded amount of Rs.3,32,385/- to the claimants of the deceased. The order impugned does not suffer from any legal infirmity warranting interference of this Court.

19. With regard to awarding of interest on deposit and also apportionment, the appeal is liable to be dismissed.

20. Accordingly, the Appeal is dismissed with costs, while confirming the order impugned.

Miscellaneous petitions, if any, pending shall stand dismissed.

28th March, 2018
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JUSTICE N.BALAYOGI