

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

C.M.A.No.1090 of 2009

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the Insurance Company against the orders dated 06.04.2006 passed in W.C.No.59 of 2004 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle-2, Visakhapatnam.

The case of the applicants before the lower Court is that one Sri R. Siva Prasad, the son of the applicants 1 & 2 and brother of applicant No.3 died in an accident arising out of and in the course of employment. The case, therefore, is filed against the employer-Opposite Party.2, who is the contractor with Opposite Party.1 and the insurance company.

In a trial, A.Ws.1 to 3 were examined for the applicants and Exs.A.1 to A.8 were marked. R.Ws.1 to 3 were examined for the opposite parties respectively and Exs.R.1 to R.6 were marked. The Commissioner held that opposite parties are jointly and severally liable to pay Rs.3,44,689/- to the applicants. It is this order that is challenged by the insurance company.

This Court has heard Sri E. Venugopal Reddy, learned counsel for the appellant/insurance company, Sri P. Veera Raju, learned counsel for the respondents 1 to 3/applicants and Sri Ghanta Rama Rao, learned counsel for the respondent No.4./Opposite Party.1.

The essential point that is raised by the learned counsel for the appellant/insurance company is that the deceased was working as an unskilled employee. It is his contention that the policy with the insurance company is a specific contract and according to the policy of insurance, OP.2 had insured 15 unskilled workers whose wages were declared as Rs.4,10,625/-, which is equivalent to Rs.2,281/- per employee. The contention of the learned counsel for the appellant is that this is a specific contract between the insurer and the insured by which the wages are declared as Rs.2,281/- only. He therefore contends that the liability of the appellant can be at best limited to a calculation based on the wages at Rs.2,281/- only.

On the other hand, it is the contention of the learned counsel for the respondents and the monthly wages of the worker is Rs.3,680/- as per the Ex.A.7 wage certificate given by the employer himself. Therefore, he contends that there is no need to limit the wages to Rs.2,681/-.

After hearing both the parties, it is apparent that the controversy between them is resting on the fact that the deceased is described as an “unskilled workman” by the appellant. To decide the question, this Court has seen the evidence.

As per AW.1, the first witness, the wages are Rs.3,680/- as per Ex.A.7. In the cross-examination, there is a suggestion that AW.1 and OP.2 colluded to create Ex.A.7. Also a

suggestion was made that the deceased is not an “unskilled” worker. A.Ws.2 & 3 did not depose about the wages.

RW.1 represents the company which employed the contractor who in turn employed the deceased. The witness in his examination did not say anything about the skilled or unskilled nature of the work undertaken by the deceased. On the other hand, in the cross-examination by OP-2, he admits that he does not know whether the deceased was an unskilled worker or not. RW.2 who is the manager in the office of the contractor/OP-2 deposes that the deceased used to work as an unskilled worker only and that he was being paid Rs.2,250/- as monthly wages. He also admits in his cross-examination that he has not given any appointment letter to the deceased. He also admits that Ex.A.7 salary certificate was given to enable the applicants to claim compensation. RW.3 is the next witness who was examined. He is the senior assistant of the appellant/company. It is his contention that the deceased is an unskilled worker. Therefore, the burden is upon them to prove their case. In the cross-examination, he however admits that he cannot say whether the deceased is a skilled worker or unskilled worker or semi-skilled worker. He also admits that he did not know how much salary the deceased was drawing. He also admits that he did not verify the worker records and registers before issuing the policy.

The examination of the record shows that there is no clear evidence to show that the applicant is an unskilled

worker. The burden is on the appellant who urged this point. The record submitted by RW.2 does not clarify the situation. In these circumstances, this Court concurs with the finding of the lower Court, which adopted the wages of the deceased from the minimum wages fixed by the Government of Andhra Pradesh as Rs.3,134.25 paise. Because of lack of clarity, the lower Court adopted the minimum wages paid to unskilled workers as per the relevant Government Order. This Court finds that in view of the lack of evidence about the nature of duties that were carried by the deceased, this option of adopting the GO as the basis for calculation of the salary is the correct method. It is true that the policy in question shows that there is a contract of insurance, which reveals 15 unskilled, 3 semi-skilled and 2 skilled employees are insured, but there is no proof to show that the deceased was in fact an “unskilled worker”.

It is pertinent to note that the Workmen’s Compensation Act is a beneficial legislation meant to confer benefits to the workers and their dependents in cases of accident/death. In the case on hand, this Court also adopts a lenient and beneficial construction. In the absence of clarity from the employer and the insurance company/appellant, the appellant is entitled to the benefit under the Act. The appellant could not prove that the deceased was an “unskilled” worker. Merely because there is a policy with three different type of workers, this Court cannot restrict the

liability. A liberal interpretation had to be taken as the contesting parties did not introduce clear evidence. Therefore, this Court finds that there is no error in the judgment of the Commissioner for Workmen's Compensation. In the light of the available evidence, the order passed by the lower Court is just and correct.

In the result, the Civil Miscellaneous Appeal is dismissed. The order dated 06.04.2006 passed in W.C.No.59 of 2004 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle-2, Visakhapatnam is confirmed. However, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

Date: 27.02.2018
Isn

D.V.S.S. SOMAYAJULU, J