

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

CIVIL MISCELLANEOUS APPEAL No.878 OF 2009

JUDGMENT:

This appeal is filed against the order dated 30.04.2009 in W.C.No.425 of 2003 on the file of the Commissioner for Workmen's compensation and Deputy Commissioner of Labour, Nizamabad.

The W.C. was filed by the wife and children of one Syed Yakoob. Syed Yacob was employed by Respondent No.1 as a driver of the tractor bearing No.AP25G 923 on a salary of Rs.7,000/- per month. The said tractor was insured with respondent No.2. It is the case of the petitioners that on 28.06.2002, while the deceased was driving the tractor, he met with an accident and died on the spot. Hence, they filed the W.C. claiming compensation of Rs.4,00,000/- along with interest at 24% per annum. The 1st respondent remained *ex parte*. The 2nd respondent-Insurance Company contested the case by filing the counter. On behalf of the petitioner, P.W.1 was examined and Exs.A1 to A.8 were marked. On behalf of the respondents, there was no oral evidence, but copy of the insurance policy was marked. The Commissioner after assessment of the evidence on record came to a conclusion that the claimants are entitled to the compensation of Rs.3,43,871/- along with interest. It is this order that is now challenged in the appeal.

Heard Sri M.Rajamalla Reddy, learned counsel for the appellants and Sri K.Srinivas, learned counsel for the respondent.

The only point that is strenuously urged by the learned counsel for the appellants is that the Commissioner for Workmen's compensation committed an error in adopting the wages payable

as Rs.3,149/- instead of Rs.4,000/- which was the wage that was paid to the deceased at the time of his death. However, the lower Court noticed that there is no documentary evidence filed to show the wages that were paid. Wages that were claimed were not backed up by any documentary evidence. Therefore, the lower Court adopted the method of deciding the wages as per the statutory wages namely the minimum wages payable to a driver. There is a procedure for adopting the minimum wages as the wages as has been approved by this Court in a series of judgments. This Court, therefore, concurs with the finding of the lower Court on this issue. In the absence of evidence, the best available method was adopted by the lower Court, namely, relying on the minimum wages prescribed. This Court, therefore, concludes that no error was committed by the Commissioner in adopting Rs.3,194/- as wages. No other point was urged in this appeal and this order is also being confined to what is argued. Therefore, this Court is of the opinion that there are no merits in the appeal and that the order of the lower Court is correct and as per law.

Hence, the appeal is dismissed. No costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

Date : 27.02.2018
ssp

D.V.S.S.SOMAYAJULU, J