

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

**CMA No. 525 of 2007**

**J U D G M E N T :**

This is an appeal filed by the Insurance Company challenging the order dated 28.02.2006 in WC.No.39 of 2005 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar.

The applicants in the lower Court are the wife, minor children, parents and other family members of late Mohd.Hussain, who was working as a Driver under the employment of first opposite party, who is the owner of the vehicle AP 29 T 5803. The case of the applicants in the lower Court is that in an accident on 22.06.2005, the diesel tank of the lorry exploded thereby causing the death of the husband of the first applicant. Hence, the application is made claiming compensation of Rs.5,00,000/- for the death of the deceased workman. The second opposite party is the insurance company.

The first opposite party remained *ex parte*. The second opposite party filed its counter and denied all the allegations made. AW.1 is the first applicant. She filed Exs.A.1 to A.6 and was cross-examined. On behalf of the second opposite party, RW.1 was examined and Ex.D.1 was marked.

After considering the oral and documentary evidence, the lower Court/Commissioner granted compensation along

with stamp fee, advocate fee totalling Rs.4,17,607/-. It is this order that is impugned in this appeal.

This Court heard C.Prakash Reddy, learned counsel for the appellant and Sri A.Narasimha Reddy, learned counsel for the respondents.

The essential questions that were raised in the appeal and on which the arguments were focused were on the fact that the employer/employee relationship is not proved and that the rate of interest that was awarded is contrary to the law on this subject.

It is the submission of the learned counsel for the appellant that the applicants in the lower Court have not filed any proof to show that the first applicant's husband was in fact employed or that he was drawing salary from the first opposite party.

On the other hand, it is the contention of the learned counsel for the respondents that in an unorganized sector, no clear documentary evidence is generally available and a reading of all the documents that are filed namely Exs.A.1 to A.5 in a sequence would go to show that the deceased was working on the lorry, which met with a ghastly accident resulting in burning and the death of the deceased workman. The learned counsel submits that the deceased was on the lorry and he succumbed to the injuries sustained due to the burning of said lorry in the accident. His presence at that spot in Karnataka State was only due to his employment.

Otherwise, the deceased, according to the learned counsel for the respondents, had no reason to be in a lorry at 4 a.m. in the morning in a neighbouring State. He also pointed out that there is no effective cross-examination on these aspects.

The Tribunal also after considering the material on record came to a conclusion that a reading of the FIR and all the other documents, in a sequence, leads to the conclusion that the accident occurred out of and in the course of employment. Therefore, this Court is also of the view that the lower Court rightly decided on the aspect of the employment. On the other issues of wages and age etc., no serious issue was raised or argued. Hence, the findings on the employment of wages and age of the deceased are confirmed.

The other issue that is strenuously argued by the learned counsel for the appellant is about the award of interest at 12% from the date of filing of the application.

This Court, on an examination of the matter, finds that in view of the settled legal position highlighted by the counsel for respondents, particularly, the judgments of the Hon'ble Supreme Court of India in the case of ***The Oriental Insurance Company Ltd. V. Siby George and Others***<sup>1</sup> and starting from ***Ved Prakash Garg V. Premi Devi and others***<sup>2</sup> that interest is payable. In fact, in this case, interest is awarded only from the date of the application. This Court is of the opinion that the award of interest at 12% from the date

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<sup>1</sup> 2012 (12) SCC 540

<sup>2</sup> AIR 1997 SC 3854

of filing of the application is not contrary to law. Therefore, this Court holds that there are no infirmities in the order of the lower Court.

For these reasons, the appeal is dismissed. No costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

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**D.V.S.S. SOMAYAJULU, J**

Date: 06.02.2018  
KLP

