

HONOURABLE SRI JUSTICE N.BALAYOGI
CIVIL MISCELLANEOUS APPEAL No1487 of 2008

JUDGMENT

The appellant / New India Assurance Co., Ltd., preferred this appeal aggrieved by the order dated 22nd December, 2005 in W.C.No.19/2003, whereby the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Khammam, allowed the aforesaid W.C., awarding compensation of Rs. 2,76,805/- and directed the appellant/Opposite Party No.2 herein and the respondent to pay the said amount jointly and severally, within thirty days from the date of receipt of order failing which the applicant is entitled for interest @ 12% per annum on the amount of compensation from the date of filing of the application.

2. This appeal is also preferred on the ground that the Commissioner, erred in granting 12% interest per annum and awarded Rs.2,76,805/- as compensation. The Commissioner also failed to consider that the owner of the Auto has admitted that the deceased was paid Rs.2,000/- per month as wages. But the Commissioner took the wage of the deceased as Rs.2,604/- per month without any basis.

3. The appellant mainly contended that on 22.08.2002, while the deceased was on duty as a Casual Cleaner on the Auto bearing No. A.P.-20-U-7486, who is employee for the

respondent/Opposite Party No.1, met with accident, while he was on duty and succumbed to injuries. The age of the deceased was 28 years, and earning Rs.3,000/- per month towards salary.

4. The respondent / Opposite Party No.1, owner of the vehicle, filed counter affidavit, stating that he was paying Rs.2,000/-per month to the deceased and also Rs.20/- towards batta. At the time of accident, the deceased was on duty. He submitted in his counter that his vehicle is insured and so the appellant / Opposite Party No.2-New India Assurance Company Limited, herein is liable to pay compensation.

5. The appellant / Opposite Party No. 2 also filed counter, stating that the driver was not having valid and effective driving licence as on the date of accident. Hence, the appellant / Opposite Party No.2 is not liable to pay any compensation.

6. Basing on the rival pleadings, the learned Commissioner framed the following issues for settlement:

1. Whether the deceased G.Venkanna was employed as a driver by opposite party No.1 i.e. Sri Sammaiah – Employer on his vehicle bearing NO. A.P. 20 U 7486 as on the date of accident?
2. Whether the alleged accident took place out of and in the course of employment with Opposite Party No.1?
3. If so, what relief the dependents of deceased are entitled?

7. In order to prove the respective claims, the first respondent/applicant is examined as P.W.1 and got marked Exs.A.1 to A.7. None were examined on behalf of the appellant/ Opposite Party No.2 and respondent /OP No.1, however, Ex.R.2 policy was got marked on their behalf. On behalf of the respondents/applicants none appeared. Respondent No.2 and Respondent No.3 are being minors, represented by Respondent No.1, Respondent No.4 to 6 having received the notices, did not make their appearance.

8. Now the point for consideration is whether the order of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Khammam suffers any illegality.

9. The respondent/ Opposite Party No.1- A. Sammaiah admitted in the averments that he used to pay Rs.2,000/- per month and also Rs.20/- towards batta to the deceased. The first respondent herein/applicant was examined as P.W.1. In her Chief evidence affidavit, she specifically stated that her husband was working as Auto Driver of Auto bearing No. A.P.20U 7456, belonging to the respondent/Opposite Party No.1 - Sri Sammaiah and used to earn Rs.3,000/- per month. During cross examination of the P.W.1 by the Insurance Company / Appellant, P.W.1 stated that she has not filed any documents to show that her husband is working under the owner of the vehicle and also did not file any salary certificate. Now, going to

the evidence of R.W.1, the owner of the Auto stated that he employed V.Venkanna as driver of Auto bearing No.AP-20-U-7456 for the last 10 months as on the date of accident. He has admitted that he has paid Rs.2,000/- per month only. But in the counter he stated that besides said Rs.2,000/- he used to pay Rs.20/- towards Batta per day to the deceased. The R.W.1 was cross examined by the Appellant / Insurance Company. In the cross examination the R.W.1 admitted that he has not filed any acquaintance register in proof of payment of Rs.2000/- per month besides batta Rs.20/- per day. The Assistant Administrative Officer for the appellant stated that the deceased colluded with A.P.S.R.T.C. authorities and the driver of the A.P.S.R.T.C bus is responsible for the accident. This entire evidence is silent with regard to the income of the deceased.

10. In the circumstances discussed above, the Commissioner considered oral and documentary evidence of P.W.1, R.W.1 and 2 and as there is no proof of income of the deceased, relying on exhibits A.1 and A.2, , considered the age of the deceased as 28 years.

11. However, considering evidence of P.W.1 and also R.W.1 and 2, as there are no convincing evidence that the deceased was paid Rs.3,000/- as deposed by P.W.1 besides batta Rs.20/- per day, as admitted by R.W.1, the Commissioner applied minimum wages and Rs.2,604/- as monthly wage as per G.O.Ms.No.30 L.E.T. & F (LAB-II) Department, dated

27.07.2000, wherein minimum rates of wages have been fixed by the Government of Andhra Pradesh for the category of a Motor Driver. Basing on the above G.O., the Commissioner awarded a compensation of Rs.2,75,750/- under section 4(A) of the Workmen's Compensation Act, Advocate fee of Rs.500/- and Court fee of Rs. 355/- totaling a sum of Rs.2,76,805/-.

12. There is clear finding that the deceased was the employee under the respondent/Opposite No.1, owner of the Auto. Thus, there is 'employer' and 'employee' relationship between the respondent / Opposite Party No.1 and the deceased. Since no income proof was produced, the learned Commissioner relied on G.O.Ms.No.30 Labour Employment Training and Factories (Lab.II) Department, dated 27.07.2000 and hold that the deceased was paid Rs.2,604/- per month including V.D.A. prior to the date of accident.

13. With regard to the interest@ 12% per annum, under section 4(A) (3) of the Amended Act of Workmen Compensation, prescribes that 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 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. Accordingly, the Commissioner, Workmen Compensation and Assistant

Commissioner of Labour awarded 12% simple interest per annum. The interest shall be calculated after 30 days of filing claim application to till date of payment.

14. In the facts and circumstances discussed above, the findings of the Commissioner for Workmen's Compensation are valid, legal and do not suffer from any legal infirmities, warranting interference with the Award and in the result, the appeal is dismissed, with costs, confirming the Award and decree dated 22.12.2005 passed in W.C.No.19 of 2003 by the learned Commissioner for Workmen's Compensation and Assistant Commissioner, Labour, Khammam.

15. The appellant / Opposite Party No.2 and the respondent / Opposite Party No.1 are directed to deposit the compensation awarded by the Commissioner jointly and severally, if not already paid/deposited, within a period of thirty days from the date of receipt of a copy of this judgment after adjusting the amount, if any, already paid by way of a demand draft obtained in the name of Commissioner for Workmen's Compensation, Warangal, and sent it to the Dy. Commissioner of Labour, Warangal.

Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE N.BALAYOGI

Dated: 10.04.2018

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Dated 10th April, 2018

JR

