

HONOURABLE SRI JUSTICE N.BALAYOGI

CIVIL MISCELLANEOUS APPEAL No.64 of 2010

JUDGMENT :

Appellants/applicants, aggrieved by the order dated:29.12.2008 in W.C. No.2 of 2008 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ongole, (for short, the Commissioner) for dismissing the claim, preferred this Appeal, contending that the Commissioner failed to see that in the charge-sheet as well as in inquest report, the occupation of the deceased is noted as Cleaner of the vehicle and also the Commissioner failed to see the evidence of the owner of the vehicle with regard to employment of the deceased and his occupation.

2. Whereas, the 2nd respondent contends that there is a delay of 43 days in preferring an appeal and the documents are fabricated.

3. Now, the point that arises for determination is :

“Whether the order dated 29.12.2008 in W.C. No.2 of 2008 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ongole, suffers from any legal infirmity, warranting interference?”

4. The learned counsel for appellants contend that the deceased was cleaner under the 1st respondent and during the course of employment and while discharging duties, he met with an accident and the respondents are liable to pay compensation.

5. *Per contra*, the counsel for the 2nd respondent contends that the documents are created in support of false claim.

6. The consistent evidence of A.W.1 is that she is wife of the deceased Manikala Laxmana Rao @ Laxman who was an employee under the 1st respondent as a Cleaner in lorry bearing No.AP 27 V 6525. A.W.1 is the wife and petitioners 2 and 3 are parents of the deceased. On 1.9.2007 her husband met with an accident involving lorry bearing No.AP 27 V 6525. Ex.A1 is the F.I.R. registered on the report given by Manikala Kishore Babu on 13.10.2007 with respect to the accident occurred on 1.9.2007, where it was clearly asserted that on 1.9.2007 at about 11.30 PM lorry bearing No.AP 27 V 6525 was involved in the accident resulting the deceased sustained injuries in his stomach and left hand. The cause for the accident is rash and negligent driving of the driver of the said lorry. At the time of accident, the lorry was proceeding with cement bags loaded from the Andhra Cement factory, driven by the accused driver in a rash and negligent manner, and dashed against one stationed lorry bearing No.AP 09 X 5385 from behind. The said lorry went to its front and dashed against another lorry bearing No.AP 16 TW 1647. From the impact, it is very clear that how much speed, rash and negligently the lorry bearing No.AP 27 V 6525 was driven and had the driver drove the lorry with care and caution, he would have avoided the accident.

7. Further, from the evidence of A.W.1 and A.W.2, it is clear that the deceased was 25 years old at the time of accident. The owner of lorry was examined as A.W.2, whose evidence is that lorry was involved in accident. The injured while taking treatment died in the hospital. There is an evidence of A.W.2 showing that she appointed the deceased as cleaner in her lorry bearing No.AP 27 V 6525 and used to pay the salary of Rs.3,500/- per month. A.W.1 clearly deposed that since 4 years prior to accident, he was working in the said lorry as Cleaner under A.W.2. Under Ex.A2 inquest report and Ex.A4 additional charge-sheet, occupation of the deceased is noted as Cleaner.

8. The clinching evidence of A.Ws.1 and 2 is that the deceased received injuries and admitted in Hospital and died while undergoing treatment. Ex.A3 is the post mortem report issued at AMC, Visakhapatnam, wherein the Doctor opined that cause of death is due to septic shock due to blunt injury in abdomen. In Ex.A1 – F.I.R. and charge sheet-Ex.A4, it is stated that the deceased sustained injuries in the accident.

9. That, merely because A.W.2 did not give any report to the Police, it does not mean that the deceased was not an employee under A.W.2. The delay is properly explained in the evidence; that immediately after the accident, injured was shifted to the Government Hospital at Yelamanchili and he was referred to K.G.H., Visakhapatnam for better treatment. It is the duty of the hospital

authorities that immediately after admitting the patient, to intimate the nearest Police Station.

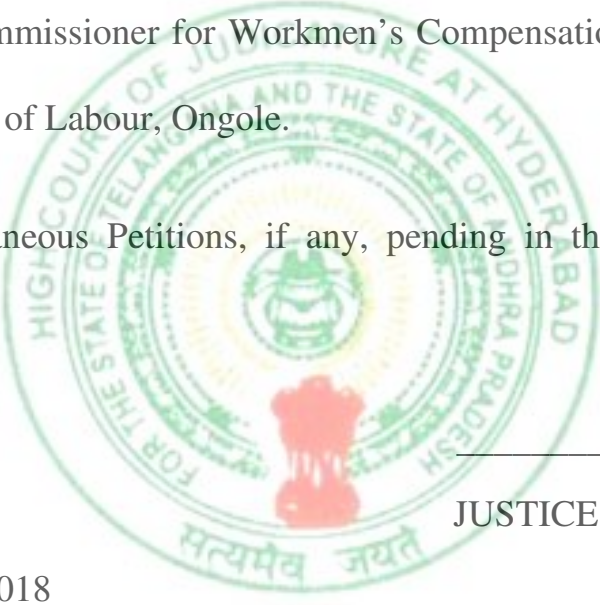
10. Further, with regard to age of the deceased in the claim petition, age is mentioned as 22 years at the time of death. Admittedly, proof of age, the claimant/s did not file any document. In Ex.A.2-copy of inquest report, noted age of deceased as 25 years and also in column No.II noted as 25 years. In Ex.A.4-copy of additional charge sheet, the age of the deceased is noted as 25 years. In the absence of any documentary evidence, relying on the age as mentioned in Exs.A.2 to Ex.A.4, considered the age of the deceased at the time of accident as 25 years. With regard to income of the deceased, the evidence of AW.1 is that, deceased was working as cleaner of lorry No.AP 27/V 6525 and he used to get an amount of Rs.3,500/-. AW.2 who is the owner of the lorry also stated that, she used to pay Rs.3,500/- to the deceased as Cleaner. But the appellants/claimants did not file any proof of income. The minimum wages for a cleaner fixed by the Government of Andhra Pradesh in employment of Public Motor Transport vide G.O.Ms.No.30, L.E.T & F.(Lab-II) Department, dated:27-7-2000 is 1437. Adding to it, Variable Dearness Allowance (V.D.A.) is $185 \times 7.75 = 1433.00 = 2,870 \times 50 / 100 \times 216.91 = 3,11,265.85$. As per schedule-IV of Workmen's Compensation Act, relevant factor for 25 years of age is 216.91. The calculation for compensation is 50% of monthly wages of the deceased. Accordingly, compensation comes to Rs.2,870=00. The calculation is $2,870 \times 50 / 100 \times 216.91 = 3,11,265.85$,

which is the compensation payable to the appellants/claimants. The same amount can be payable by the respondents by virtue of policy. Respondent No.2 has to indemnify liability of the respondent No.1. Moreover, interest also to be paid at the rate of 7.5% from the date of accident ie., 01-09-2007, till the date of realization.

Advocate fee of Rs.2,000/- is fixed.

11. In the result, the Civil Miscellaneous Appeal is allowed while setting aside the order dated:29.12.2008 in W.C. No.2 of 2008 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ongole.

Miscellaneous Petitions, if any, pending in this Appeal, shall stand closed.



JUSTICE N. BALAYOGI

Dated:22-03-2018

Skmr / gnr

HONOURABLE SRI JUSTICE N.BALAYOGI



CIVIL MISCELLANEOUS APPEAL No.64 of 2010

Dated:22-03-2018

Skmr / gnr