

THE HON'BLE SRI JUSTICE N.BALAYOGI

C.M.A. No.1181 of 2008

JUDGMENT :

This appeal is filed by the New India Assurance Company Limited under Section 30 of Workmen's Compensation Act having been aggrieved by the order in W.C.No.2 of 2001 dated 11.05.2007 passed by the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour at Khammam in awarding compensation of Rs.1,75,969/- against the appellant and the 3rd respondent herein jointly and severally with a direction to pay interest thereon at the rate of 12% per annum under Section 4-A(3)(a) of the Amended Act, 1995 calculated after 30 days of filing of application till the date of payment.

2. The contention of the appellant herein is that the Commissioner erred in awarding compensation of Rs.1,75,969/- with interest at 12% per annum from the date of filing of the application till the date of payment.

3. Per contra, the learned counsel appearing for the applicants-respondents 1 and 2 herein contended that the impugned order does not suffer from any illegality or irregularity warranting interference by this Court and that the applicants/respondents 1 and 2 herein are entitled for interest from the date of filing of the application.

4. The claim of the applicants/respondents 1 and 2 herein is that the deceased-Borroju Ganesh was working as a cleaner on the

Tipper bearing No.AP 10T 8922 under the first respondent. While so, on 23.09.1999 at 6.30 a.m., while the tipper was proceeding from CSP Yellandu towards open cast and as the railway gate was closed, the tipper was stopped and the deceased found that hydraulic oil was leaking from the body of the vehicle. Hence, he lifted the body of the tipper with “lift” and while he was trying to tight the nut and repairing the leakage, accidentally, the body of the tipper fell on the deceased as a result, he died on the spot. The 3rd respondent herein employed the deceased as cleaner on the tipper and that the accident occurred only during and in the course of the employment and that the deceased died while on duty under the employment of 3rd respondent herein.

5. The appellant herein filed a counter denying the averments of the applicants such as the employment of the deceased under the 3rd respondent herein, his wages, age and earnings etc. It also denied the manner of the accident as alleged and contended that the deceased himself was responsible for the accident. It is further contended that the repairing of the leakage is the duty of the mechanic, but not the cleaner as such the policy issued by the appellant herein does not cover the risk of deceased.

6. The Commissioner on consideration of rival pleadings of both the parties, settled the following issues: _

“1. Whether the deceased Borroju Ganesh was employed by the opposite party No.1 as cleaner on his Tipper bearing Registration No.AP 10T 8922 on the date of accident?

2. Whether the alleged accident took place out of and in the course of employment with the Opp. Party No.1?

3. Whether the deceased has violated the conditions of the insurance policy as stated in additional counter?

4. If so, to what extent of relief the dependants of the deceased are entitled to”

7. On behalf of applicants/respondents 1 and 2 herein, first applicant was examined as P.W.1 and marked Exs.A.1 to A.7. On behalf of appellant herein, Ex.B.1-policy copy was marked but no oral evidence was adduced.

8. Now the point that arises for consideration in this appeal is:- ‘Whether the order in question suffers with any illegality or infirmity warranting interference by this Court?’

9. The learned counsel for the appellant contended that the applicants/respondents 1 and 2 herein are entitled for interest only from 30 days after the order, but not from the date of filing of the application. Per contra, the applicants/respondents 1 and 2 herein contended that they are entitled for interest from the date of filing of the application.

10. The first applicant/first respondent herein, who is the father of the deceased was examined as P.W.1. His clinching evidence is that his deceased son was employed by the third respondent herein as a cleaner on his tipper bearing No.AP 10T 8922 and he was 20 years old as on the date of accident and was earning Rs.1,500/- per month.

11. Though P.W.1 was cross-examined at length, the appellant could not elicit any favourable evidence. In the cross-examination, P.W.1 clarified that his deceased son was working as cleaner on the tipper belonged to the third respondent herein. He admits that he

did not file any document in support of employment of deceased with third respondent herein. Ex.A.1 is the copy of F.I.R., which was presented by the brother of the deceased, in which, it is clearly mentioned that the deceased was aged about 19 years and was working as a cleaner on the tipper bearing No.AP 10T 8922; that on 23.09.1999 at about 6.30 a.m., when the tipper was stopped near the railway gate as it was closed at that time and as there was leakage of oil from the tipper, the deceased got down from the tipper and while attempting to repair the same, the body of tipper fell on him and as a result, he died on the spot. In Ex.A.3/Inquest report also, there is a specific mention that the deceased, aged 19 years was working as a cleaner on the tipper bearing No.AP 10T 8922 under the third respondent herein. Ex.A.3/inquest report and Ex.A.4/post-mortem examination clearly goes to show that the deceased died due to the injuries on the vital organ-brain in the accident on 23.09.1999 at 6.30 a.m. and that the death occurred out of and in the course of employment. The deceased was under the employment of third respondent on the tipper bearing No.AP 10T 8922.

12. It is also not in dispute that the finding of the Commissioner that the third respondent is the owner and that the deceased was appointed by him as cleaner on his tipper bearing No.AP 10T 8922 and on 23.09.1999 at 6.30 a.m. during the course of employment while the deceased was repairing the leakage of oil from the body of the tipper, the body fell on him and as a result, he died on the spot.

13. Before the Commissioner, though the appellant denied the averments of the applicants/respondents 1 and 2 herein and the

manner of the accident did not choose to enter into the witness box to adduce rebuttal evidence, but simply filed Ex.B.1/copy of insurance policy. Absolutely, there is no rebuttal evidence of P.W.1 and Exs.A.1 to A.7. The Commissioner while passing the award, applied his mind, gone through the terms and conditions of Ex.B.1/insurance policy and observed that in the policy, it is mentioned as “Add & C” to penam employer in connection with operation and/or maintaining and/or unloading of motor vehicle IMT-17” and collected extra premium of Rs.30/-” and hence, the cleaner is an employee on the vehicle of the employer and he has to attend the maintenance of vehicle and holding so, the Commissioner rejected the arguments put forth by the appellant that the cleaner has entered into the shoes of mechanic.

14. It is the evidence of P.W.1 that he did not file any document to prove the age of the deceased. In the absence of any documents, the Commissioner took the age of the deceased as 20 years which is mentioned in Ex.A.4/post mortem examination. Though the applicants/respondents 1 and 2 herein claimed that the deceased was drawing the wages at Rs.1,500/- per month, the Commissioner held that the deceased was paid at Rs.1,555/- per month including VDA as on the date of accident in the light of G.O.Ms.No.71 WDC W & C (Lab.II) dated 16.04.1991. Taking into consideration Ex.A.3, the Commissioner fixed the age of deceased 25 years and basing on relevant factor 225.22 and wage at Rs.1,555/-, arrived at the compensation of Rs.1,75,109/- under Section 4(i)(b) of the Act. Further, the Commissioner fixed the Advocate’s fee at Rs.500/- and Court fee at Rs.360/- and awarded the total compensation of Rs.1,75,969/- payable to the applicants. The Commissioner

granted interest at 12% per annum from the date of filing of the application till the date of payment, which is now being questioned by the appellant.

15. In support of its case, the appellant relied on a decision in **New India Assurance Co. Ltd., Kadapa v. Pujala Chenchu Nagaiah and others**¹, wherein this Court held that the obligation on the part of the insurance company to pay interest would arise only after expiry of one month from the date of order passed by Commissioner, till date of payment.

16. The liability arising under the Workmen's Compensation Act, in respect of death or bodily injury towards a cleaner is statutory and mandatory and any basic policy would cover it. The insurer would not be under obligation to pay any extra premium to cover the liability towards the cleaner of the vehicle.

17. Under Section 4-A(3)(a) of the amended Act, the Commissioner is, no-doubt, conferred with the power to award interest, but it cannot be awarded from the date of filing of the application or accident unless there did not exist any controversy as to the liability. In such case, the obligation on the part of the insurance company to pay the interest would arise after expiry of one month from the date of order passed by the Commissioner. Hence, in the present case, the Commissioner awarded interest on compensation amount at 12% per annum from the date of filing of the application till the date of payment, which is against Section 4-A(3)(a) of the Act and the settled principles of law and the order is liable to be set aside to that extent.

¹ (2011 (1) ALD 596)

18. In the result, the C.M.A. is partly allowed upholding the order passed by the Commissioner dated 11.05.2007 in W.C.No.2 of 2001 in all respect except to the extent of directing the appellant herein or the third respondent, as the case may be, to pay interest at the rate of 12% per annum after 30 days of filing of the application till the date of payment. Instead, the appellant and third respondent shall pay the interest at the rate of 12% per annum after expiry of 30 days from the date of the order passed by the Commissioner till the date of payment.

19. Advocate fee is fixed at Rs.2,000/-.

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

13th April 2018

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JUSTICE N.BALAYOGI

