

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL MISCELLANEOUS APPEAL Nos.1270 and 1503 of 2004

COMMON JUDGMENT:

These appeals arise out of a common accident. The Driver and the Cleaner of the lorry bearing No.AP-10T-8800 belonging to Karnataka Metal Company Limited suffered injuries in the accident that occurred on 18.10.2002 at about 23:00 hrs while proceeding in the lorry from BALCO to Hyderabad and a tractor bearing No.CG-12-9228 coming from the Bilas Pali side dashed their lorry near Kosabadi.

Claiming that the accident occurred during the course of employment and they are entitled to compensation for the injuries, the Driver and Cleaner filed claim petitions, W.C.No.49/2003 and W.C.Case No.83/2003, respectively, before the Commissioner, Workmen's Compensation, Hyderabad, against the employer i.e., Karnataka Metal Company, and the insurer-Oriental Insurance Company.

The Commissioner, after considering the oral and documentary evidence, awarded compensation of Rs.1,90,549/- to the Driver by order dated 27.01.2004; and Rs.1,29,481/- to the Cleaner by order dated 16.02.2004 holding the employer and the insurer jointly and severally liable for payment of compensation. Aggrieved by the same, the Oriental Insurance Company is before this Court with these appeals.

C.M.A. No.1270 of 2004:

Heard the learned counsel for the appellant-insurance company.

The facts are not in dispute. The principal ground urged in this appeal is that the first respondent-Mukhram Sharief, who claimed to be the

Driver of the lorry, did not in fact possess the driving license nor produced evidence with respect to his claim as driver. Therefore, in the absence of evidence with respect to the claim of first respondent being a driver, the very granting of compensation to the first respondent by considering the wages applicable to a driver is unsustainable.

Per contra, the learned counsel for the first respondent vehemently opposes the appeal and submits that there is no question of law arising for adjudication in this appeal, and further the factum that the authority has recorded a finding that the first respondent is a driver is a proof positive and therefore the order passed by the Commissioner granting compensation does not require interference.

A perusal of the record would disclose that there is no evidence brought on record to establish that the first respondent-Mukhram Sharief was the driver of the lorry No.AP-10T-8800. Therefore, in the absence of evidence, the wages applicable to a Driver cannot be applied to the case of first respondent for the purpose of determining the compensation. Therefore, inasmuch as the wages applicable to a driver i.e., Rs.3721.50 were taken into consideration for the purpose of computing compensation for the first respondent, the order to that extent is liable to be modified.

However, as the evidence does disclose that the first respondent suffered injuries in the accident, at best, the wages applicable to a Cleaner can be taken into consideration for computing the compensation. In that view of the matter, considering that in respect of the same accident, with respect to the Cleaner of the lorry (in W.C.Case No.83/2003), the compensation was computed by considering the wages as Rs.2,057/-, the

same wages of Rs.2,057/- can be taken into consideration for the purpose of computing compensation for first respondent-Mukhram Sharief as well.

Therefore, considering the total wages of the first respondent-Mukhram Sharief as Rs.2,057/- per month, the compensation would come to Rs.1,05,940/- (Rupees One Lakh Five Thousand Nine Hundred Forty Only), inclusive of Stamp Fee and Advocate Fee.

Accordingly, the CMA No.1270 of 2004 is partly-allowed by modifying the compensation awarded to the first respondent-Mukhram Sharief as Rs.1,05,940/-, inclusive of Stamp Fee and Advocate Fee. No costs. Miscellaneous petitions, if any pending, shall stand closed.

CMA No.1503 of 2004:

Heard Ms. I. Maamu Vani, learned counsel for the appellant.

The facts are not in dispute. The only ground canvassed before this Court in this appeal is that the wages considered for computing the compensation of the first respondent herein-Amar Chand, who claimed to be the Cleaner on the lorry AP-10T-8800, is excessive, and further there is no evidence brought on record to show that the first respondent-Amar Chand was working as Cleaner on lorry No.AP-10T-8800 belonging to 2nd respondent Karnataka Metal Company Limited.

A perusal of the record would show that, as a matter of fact, counter affidavit was filed admitting that the first respondent-Amar Chand was engaged as Badli Cleaner. In view of the finding of fact, there is no reason for this Court to come to a contrary conclusion and therefore the appeal is liable to be dismissed. Further, it may also be noted that, as a matter of fact, the appeal against the first respondent-cleaner stood dismissed for

default for non-compliance of the Order dated 15.12.2015. There is no restoration application filed by the then counsel for the insurance company seeking restoration of the appeal against the first respondent-Cleaner. Therefore, even on that ground, the appeal is liable to be dismissed.

Accordingly, the CMA No.1503 of 2004 is dismissed. No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

CHALLA KODANDA RAM, J

16th June, 2021
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