

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY
CIVIL MISCELLANEOUS APPEAL NO.350 OF 2008

JUDGMENT:

The appellant/opposite party No.2 viz. The New India Assurance Company Limited has filed this Civil Miscellaneous Appeal assailing the orders dated 13.02.2008 in W.C.No.137 of 2007 before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, T.Anjaiah Karmika Samkshema Bhavanam, RTC Cross Roads, Hyderabad.

2. W.C.No.137 of 2007 was filed by the applicants claiming compensation under the provisions of Workmen's Compensation Act, 1923 for the death of late K.Venka Goud (hereinafter called as 'deceased workman'), against the employer of deceased workman and owner of DCM Van bearing No.AP 9U 3682 i.e. the opposite party No.1 and the insurance company i.e. the opposite party No.2. The Court below has allowed W.C.No.137 of 2007 holding that the opposite party Nos.1 and 2 are jointly and severally liable to pay compensation to the dependents of the deceased workman, who died on 03.05.2006 due to the injuries

sustained in the accident occurred on 20.02.2006, which arose out of and in the course of his employment, working as cleaner on the insured DCM Van bearing No.AP 9U 3682, in the employment of first opposite party. The compensation amount of Rs.1,89,487/- together with Stamp Fee of Rs.369/- and Advocate Fee of Rs.500/-, totalling to Rs.1,90,356/- was ordered to be paid by the opposite party Nos.1 and 2 to the dependents of the deceased workman with a direction to deposit the said amount by means of Demand Draft drawn on any nationalized bank in favour of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Hyderabad within thirty days from the date of receipt of order.

3. Feeling aggrieved by the said order dated 13.02.2008 this Civil Miscellaneous Appeal is filed on following limited grounds :

(i) The authority below has failed in holding that the deceased was aged about 50 years though it is mentioned as 60 years in Ex.A10.

(ii) The authority below has failed to see that the employment of the deceased is not proved.

4. Heard learned counsel on both sides. The submissions made on either side have received due consideration of this Court.

5. In the light of the rival contentions and material available on record, the following points arose for consideration :

(i) Whether the Court below is justified in assessing the age of the deceased at 50 years at the time of the accident?

(ii) Whether the order impugned is sustainable?

6. Both the points are answered together for the sake of brevity as under.

Point Nos.(i) and (ii) :

7. Be it stated that the insurance company is not disputing its liability. As per the grounds of appeal, the insurance company is only disputing the age of deceased at the time of his death. Learned counsel for the appellant insurance company would submit that as per Ex.A10 copy

of case sheet, issued by Gandhi Hospital, the age of the deceased workman is mentioned as 60 years. The Court below has assessed his age as 50 years only contrary to the material available on record and this defect needs to be rectified in the order impugned.

8. Per contra learned counsel for the respondent Nos.1 and 2 / applicants would submit that though the age of the deceased workman is mentioned as 60 years in the case sheet, as per the post-mortem examination report, which is marked as Ex.A3 in the evidence of AW1, the age of the deceased is mentioned as 50 years only and accordingly, the Court below has rightly taken into consideration the contents of Ex.A3 and assessed the age of the deceased as 50 years at the time of his death and the order impugned does not warrant any interference by this Court.

9. Perused the record. On behalf of claimants AW1 is examined. In his evidence Exs.A1 to A10 documents are marked. AW1 is the second applicant, he filed his evidence affidavit in lieu of chief-examination. In

the cross-examination by the second opposite party insurance company with reference to the age of the deceased workman at the time of death, nothing worth mentioning is elicited to hold that the age of the deceased is wrongly mentioned in the post-mortem examination report and that the correct age is mentioned in the case sheet Ex.A10. Further, AW1 has denied the suggestion that the deceased was aged about 60 years and that he was working as cleaner, would not get more than Rs.1,000/- per month and not entitled for compensation and a false case is filed. Ex.A3 is the attested copy of post-mortem examination report wherein the age of the deceased is reported as 50 years. This document is marked in the evidence of AW1 without there being any resistance from the insurance company nor there was any cross-examination with reference to Ex.A3 and age mentioned therein including the cause of death of deceased workman.

10. The Ex.A10 is only discloses that the deceased was admitted on 20.02.2006 i.e. on the date of accident itself vide MLC No.3939 and took treatment up to

25.02.2006, left the hospital against the medical advice on 25.02.2006. It is recorded in Ex.A10 that the patient alleged to have met with road traffic accident on 20.02.2006 and the same was informed to P.S., Kukunoorpally by the Superintendent of Gandhi Hospital vide letter dated 13.04.2006 and the age is mentioned as 60 years. But the mere fact that the age is mentioned as 60 years in the case sheet is not sufficient to hold that in the post-mortem examination the age of the deceased is wrongly mentioned. The insurance company has not filed any other proof of age of the deceased employee such as voter I.D.Card, Aadhar Card or school certificate. In the absence of any such evidence, merely relying on Ex.A10 case sheet, the contents of Ex.A3 post-mortem report cannot be discarded.

11. It may be stated that the main purpose of case sheet is only to ascertain when the injured was admitted in the hospital and what type of treatment was given to him. There is no proof for age of deceased that is mentioned in Ex.A10. On the other hand, in Ex.A3 post-mortem report, the doctor on physical and clinical examination of dead

body, has arrived at a reasonable conclusion about the age of deceased as 50 years. As such, I do not find any force in the submissions of the learned counsel for the appellant insurance company. Accordingly, I hold that the trial Court has arrived at a right conclusion as to the age of the deceased worker and the amount of compensation was calculated assessing age of the deceased at 50 years and I do not find any reason to interfere with the findings recorded by the Court below and the order impugned is sustained. Thus, both the points are answered in favour of the claimants.

12. In the result, this Civil Miscellaneous Appeal is dismissed confirming the orders dated 13.02.2008 in W.C.No.137 of 2007 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, T.Anjaiah Karmika Samkshema Bhavanam, RTC Cross Roads, Hyderabad in its entirety. The applicants / dependents of the deceased are entitled to withdraw the entire compensation amount deposited by the appellant / insurance company before the Tribunal with interest before the Commissioner for Workmen's Compensation and

Assistant Commissioner of Labour-I, Hyderabad. In the circumstances of the case, there shall be no order as to the costs. Miscellaneous applications, if any pending, shall stands closed.

26-10-2022
Abb

A.VENKATESWHARA REDDY, J