
(2009) 06 AP CK 0029

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 243 of 2002

Oriental Insurance Company Limited

APPELLANT

Vs

N. Sarojini and Others

RESPONDENT

Date of Decision : 02-06-2009

Acts Referred:

Workmens Compensation Act, 1923 — Section 4, 4(1)

Citation : (2010) ACJ 2277 : (2009) 5 ALD 300 : (2009) 5 ALT 698 : (2009) 2 APLJ 401 : (2009) 123 FLR 892 : (2011) 7 RCR(Civil) 1684

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Kota Subba Rao, for the Appellant; R. Dayanad Goud, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—This appeal by Oriental Insurance Company Limited is against the order dated 19.11.2001 in W.C. Case No. 1 of 2001 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour (the Commissioner, for brevity), Patancheru, Medak District awarding a sum of Rs. 2,14,000/- to respondents 1 to 3 herein (hereafter called, claimants) as compensation for the death of Kanakaiah, who died in the course of employment as driver with fourth respondent herein. The two grounds urged in support of the appeal are that Kanakaiah was not an employee of fourth respondent and that the Commissioner cannot award more than the amount claimed by dependents of workman.

2. Claimants filed W.C. Case before the Commissioner alleging that Kanakaiah was driver of jeep bearing No. AP 9 AA 1063 belonging to fourth respondent (hereafter called, owner/employer). He was aged 27 years and was earning Rs. 2,500/- per month. On 25.09.2000, Kanakaiah died when the jeep met with an accident in the course of employment. Dependents of Kanakaiah claimed Rs. 2,00,000/- as compensation. After receiving notices, employer denied employee-

employer relationship and alleged that fourth respondent entered into contract with M/s. Venkateswar Travels and made payments to travel agency and not to deceased. The appellant/insurer filed separate counter opposing the case. The insurer denied employment, wage and accident. Quantum of compensation was also opposed as excessive.

3. The Commissioner conducted enquiry. The wife of deceased gave evidence as A.W.1 and marked Exs.A.1 and A.2. The Divisional Engineer of Transmission Corporation of Andhra Pradesh (AP TRANSCO) gave evidence as R.W.1 and also another witness as R.W.2 besides marking Exs.R.1 to R.7. Insurer did not examine any witness nor brought on record any documentary evidence except marking insurance policy. After framing appropriate points for consideration, the Commissioner rejected the plea of insurer and employer, and came to the conclusion that the deceased Kanakaiah was in the employment of AP TRANSCO. Having regard to age and his income, he arrived at payable compensation as per Workmen's Compensation Act, 1923 (the Act, for brevity) at Rs. 2,13,570/- and also awarded Rs. 430/- towards costs making it a total of Rs. 2,14,000/-.

4. In this appeal, though notices are served, none appears for employer (fourth respondent). Learned Counsel for appellant/insurer made submissions relevant to two questions that arise as indicated hereinabove.

5. Insofar as first question is concerned, the answer must be against appellant for two reasons. The insurer did not make any efforts to adduce evidence to disprove the allegation of claimants that Kanakaiah was in the employment of AP TRANSCO. A.W.1 deposed that her husband Kanakaiah was working with AP TRANSCO. The initial burden was thus discharged. In rebuttal, insurance company ought to have led evidence. It was not done. AP TRANSCO examined two witnesses. Though they alleged that the vehicle was hired from M/s. Venkateswar Travels and that amounts were paid to said agency, no contract between AP TRANSCO and said agency were marked nor any proof was submitted to show that deceased was in employment of M/s. Venkateswar Travels. Thus, for their failure to lead rebuttal evidence, the benefit must go on probabilities to claimants because A.W.1 deposed that her husband was working with AP TRANSCO for some time. When the jeep was admittedly used by AP TRANSCO, it is not unsafe to draw an inference that when Kanakaiah died, he was in the employment of AP TRANSCO working with fourth respondent. This Court is, therefore, not able to countenance submission of learned Counsel for appellant.

6. Claimants asked for a sum of Rs. 2,00,000/- alleging that deceased Kanakaiah was earning Rs. 2,500/- per month and he was aged 27 years. Learned Tribunal correctly applied the law, namely, Section 4(1) of the Act while calculating payable compensation at Rs. 2,13,570/- taking into consideration the factor as per IV Schedule to the Act as 213.57. While doing so, the amount awarded marginally exceeded the amount claimed. This does not in any manner amount to exceeding jurisdiction by the Commissioner as contended by learned Counsel

for appellant. The Act is a beneficial legislation and powers of the Commissioners must be interpreted having regard to its provisions. The Act nowhere restricts the power of Commissioner to award compensation keeping in view Section 4(1) of the Act and Schedule IV thereto. In a given case, even if a workman asks for compensation under the Act, without mentioning the amount, it is incumbent on the part of Commissioner, to determine the compensation having regard to the wages as defined in the Act and following the method as prescribed by it. All workmen are not expected to know technical method of determining the wages, the disability, the loss of income and the factor to be applied for arriving at total compensation payable to workmen or his dependents. This has been the consistent view that the Commissioner is under obligation to determine the compensation under the Act payable to workmen or injured workmen on his own ignoring the amount claimed - be it less or more; is settled principle of law in India. It is also well settled that claimant has a right to receive the compensation as per Section 4 of the Act, notwithstanding that he claimed lesser amount in the application.

7. In Jagdish Vs. Arun Perfumery Works and Others, , New India Assurance Co. Ltd. Vs. Kalandi Moharana and Another, , and Jayantilal Insurance Company Limited v. R. Vishnu (1991) 2 Cur LR 442 (Kar) (DB), took a similar view. In Maghar Singh Vs. Jashwant Singh, , Supreme Court indicated that whatever be the amount asked, it is the duty of Commissioner to first determine wages then age of the workman and apply relevant factor as per Schedule IV of the Act. Thus, all the Courts have been consistent with a view that the word "shall" occurring in Section 4 of the Act should be given full effect and no discretion is left to Commissioner to reduce the amount of compensation by applying the principle of waiver and acquiescence. The principle should not ordinarily be applied while enforcing and implementing welfare legislation. P.L .Malik in his treatise "Commentaries on Workmen's Compensation Act, 1923", (6th edn.,) summarized the principles in the following words.

8. Compensation payable is statutorily fixed and accordingly, in absence of cross-objection by workman, compensation already awarded can be enhanced, if on determination of the per centage of loss of earning capacity by the Commissioner, the workman becomes entitled to higher compensation on the basis of his age and monthly wages.

9. It is immaterial as to what an employee might claim. The commissioner has to grant compensation at the rate permissible under the law, in spite of a lesser claim. He has a duty to see that the injured get fair play. He has no jurisdiction to give less compensation than that laid down in the Act. The Commissioner is also not in any way fettered by what an ignorant injured workman might enter in his original application to him. An application filed under the Act, which is a social security measure, cannot be equated to a plaint before the Court. If in a given case, even though the claimant had asked for lesser amount, after proper adjudication when the Commissioner finds that higher compensation than what

was asked for, has to be awarded, he has not only the power but also the duty to award such higher compensation. The claimant has a right to receive the compensation as per Section 4 notwithstanding that he claimed a lesser amount in the application. Claiming a particular amount by way of a compensation does not disentitle the workman to a higher compensation assessed by the Commissioner or, in appeal, by the High Court. A Commissioner under the Workmen's Compensation Act cannot grant lesser compensation than prescribed under the Act and the Schedule.

10. The fact that the workman claimed a compensation of Rs. 7,560/- by itself is not sufficient to dub the order of the commissioner, as being perverse, in the sense of granting compensation in a sum much more than what the workman had claimed. A poor workman who committed a mistake in claiming compensation in a sum less than that to which he would be legitimately entitled, will not, however, debar the Commissioner from awarding compensation in a sum, to which he is legitimately entitled under the provisions of the Act.

11. The mandatory word "shall" occurring in Section 4 has its full effect and no discretion is left to the Commissioner to reduce the amount of compensation. The principle of waiver or acquiescence has no application to such cases. The workman is entitled to get what the statute entitles him to get even if has claimed a lesser amount in his application for compensation.

12. Therefore, in view of the above, this Court is not able to countenance the submission of learned Counsel for appellant that the order of Commissioner suffers from any grave error apparent on the face of record. The appeal has no merit and is liable to be dismissed. The Civil Miscellaneous Appeal is accordingly dismissed without any order as to costs.