

(2019) 06 KAR CK 0013

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 9007 Of 2015 (WC)

Sanni @ Savitha

APPELLANT

Vs

Venkataramana Sherigar

RESPONDENT

Date of Decision : 07-06-2019

Acts Referred:

Workmens Compensation Act, 1923 — Section 30(1), 8, 10

Citation : (2019) 06 KAR CK 0013

Hon'ble Judges : K. Somashekar, J

Bench : Single Bench

Advocate : Manjunath. A, Nagaraja Hegde, M. P. Srikanth

Final Decision : Allowed

Judgement

1. Though this matter is listed for admission, with the consent of learned counsel on both sides, the matter is taken up for final disposal.

2. This appeal is preferred by the appellant/claimant against the judgment and award dated 18.05.2015 passed by the Tribunal in ECA No.33/2014

seeking enhancement of compensation.

3. The factual matrix of the appeal is as under: It is stated in the claim petition that on 5.2.2012 when the deceased Sannu Gonda was working as a

Compressor Driller under Respondent No.1 in Mahendra Tractor bearing Regn.No.KA-20-N-2883, he met with an accident and sustained severe

head injury and died on the spot during the course of employment. Hence, his legal heir namely his widow filed an application under Section 8 & 10 of

the Workmen's Compensation Act seeking compensation before the Commissioner for Workmen's Compensation and Labour Officer, which

was transferred to the Senior Civil Judge, Kundapura. Prior to the accident, the deceased was hale and healthy and was earning Rs.6,000/- per month

and Rs.50/- per day as a batta working under the employment of Respondent No.1.

4. In pursuance to issuance of notice, respondent no.1 did not appear before court and hence was placed ex parte. Respondent No.2 â?" Insurer of the

Mahendra Tractor contested the petition by filing written statement and denied all the averments in the petition in so far as accident and also denied

that the appellant was the legal heir of the deceased and death of Sannu Gonda due to the injuries sustained. Further, they denied any existence of

employer â?" employee relationship between the deceased and first respondent and as well denied the avocation and income of the deceased and

sought for dismissal of the petition.

Based upon the contentions of the parties, the Commissioner for Workmenâ??s Compensation had framed the issues, which were answered by the

Tribunal. In order to establish their case, the appellant got herself examined as PW.1 and got marked 12 documents as per Ex.P1 to P12. Respondents

neither examined any witnesses on their behalf nor got marked any documents.

The Tribunal after hearing learned counsel for the claimant / appellant as well as respondent insurer, and on evaluation of oral and documentary

evidence on record, passed the impugned judgment awarding compensation of Rs5,60,590/- with interest @ 12% p.a. from one month from the date of

accident till the date of realization. It is this judgment which is challenged under this appeal, by urging various grounds.

5. Learned counsel for the appellant vehemently contends that the Tribunal has erred in taking the salary of the deceased at Rs.5,500/- per month to

award compensation. His contention is that as per the notification dated 31.05.2010 issued by the Ministry of Labour and Employment, the labour

wages is fixed at Rs.8,000/- per month. When that being the case, he contends that the Tribunal was not justified in taking the income of the deceased

at Rs.5,500/- per month. Hence, he contends that the said error committed by the court below be rectified by this court by allowing this appeal and

calculating the compensation to be awarded by taking his wage at Rs.8,000/- per month.

6. The learned counsel for the second respondent - Insurance Company does not dispute this position and contends that since the Ministry of Labour

and Employment as per its notification dated 31.05.2010 has fixed the labour

wages at Rs.8,000/- per month, the compensation may be granted fixing his income at Rs.8,000/- per month.

7. In the background of the contentions taken by learned counsel for the appellant - claimant and the learned counsel for the second respondent â?

insurer as stated supra, I am of the view that there is no dispute about the occurrence of the accident, death of Sannu Gonda in the said accident, the

employer-employee relationship between Sannu Gonda and Respondent No.1 and the Insurance Policy which was in force as on the date of the

accident. The only thing which requires interference in this appeal is regarding the income of the deceased taken by the Tribunal at Rs.5,500/- per month.

In view of the fact that as per the notification dated 31.05.2010 issued by the Ministry of Labour and Employment, the labour wages having been fixed

at Rs.8,000/- per month, I find that it is appropriate for this Court to adopt the monthly wages of the deceased at Rs.8,000/- per month as against

Rs.5,500/- adopted by the Tribunal.

Hence, adopting his monthly salary at Rs.8,000/-per month, the compensation to be awarded to the appellant / claimant is required to be arrived. Since

the death has resulted from accidental injuries, 50% requires to be deducted from the income of the deceased. On deducting 50% from Rs.8,000/-, his

income comes to Rs.4,000/-. The relevant factor as per Schedule IV of the Workmenâ??s Compensation Act applicable to age 32 is 203.85. Hence,

the appellant is entitled for compensation of Rs.8,15,400/- (4000 x 203.85) as against Rs.5,60,590/- awarded by the Tribunal. The said compensation

shall fetch interest at the rate of 12% from one month from the date of accident till the date of realisation, as awarded by the Tribunal.

Thus, in all, the appellant is entitled to a total compensation of Rs.8,15,400/- as against Rs.5,60,590/- awarded by the tribunal.

8. Accordingly, the appeal is allowed in part. The impugned judgment and award dated 18.05.2015 passed by the Tribunal in ECA No.33/2014 is

hereby modified. The claimant/appellant is entitled for enhanced compensation of Rs.2,54,810/- with interest @ 12% p.a. from one month from the

date of accident till the date of realisation.

Respondent-insurer shall deposit the enhanced compensation with interest before the tribunal within four weeks from the date of receipt of copy of

this judgment and on such deposit, the same shall be released in favour of the appellant Sanni @ Savitha, on proper identification.

There shall be no order as to the costs. Office to draw the decree accordingly.