
(2006) 03 AP CK 0156
In the Andhra Pradesh High Court
Case No : CMA No. 60 of 2002

United India Insurance Co. Ltd.	Vs	APPELLANT
Jejerath Kamble and Others		RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Workmens Compensation Act, 1923 — Section 4

Citation : (2007) 3 ALD 631 : (2007) 114 FLR 925

Hon'ble Judges : G. Chandraiah, J

Bench : Single Bench

Advocate : A.V.K.S. Prasad, for the Appellant; A.V.K.S. Prasad and Ch. Janardhan Reddy, for the Respondent

Final Decision : Dismissed

Judgement

G. Chandraiah, J.—Heard both the Counsel.

2. Since both appeal as well as cross-objections arise out of same W.C. and the parties are common, they are being disposed of by this common judgment.

3. Aggrieved by the order dated 29-5-2001 passed by the Court of Commissioner for Workmens" Compensation and Assistant Commissioner of Labour at Nizamabad, in W.C. No. 33/1997 (F) the Insurance Company filed the appeal.

4. Not being satisfied with the compensation awarded by the Commissioner, the claimants, who are brothers and mother of the deceased, filed cross-objections for enhancement.

5. The case of the claimants is that the deceased was working as cleaner on the lorry bearing No. ATR-6517 under the employment of owner of the lorry. United India Insurance Company Limited is the insurer of the lorry. On 7-4-1996 at about 5.30 p.m., while the lorry was going from Hyderabad to Nagpur, when the lorry reached the shivar (outskirts) of Dudgaon on National High Way No. 7, in front of South and North Owners and Drivers Association, the driver of the lorry

asked the deceased to see the rear tire. But accidentally, the deceased fell down and came under the rear tyres due to which his head was crushed and he died on the spot. Alleging that the deceased was hale and healthy and was aged 18 years, earning an amount of Rs. 1,800/- per month apart from daily batta, the claimants filed claim petition claiming an amount of Rs. 2,50,000/-.

6. The owner of the lorry remained ex parte and the insurer contested the matter and denied the averments of the claimants.

7. Based on the above pleadings, the Commissioner framed the following issues for consideration:

1. Whether the deceased worker is a workman within the meaning of the Act and whether he died during the course of employment under opposite party No. 1 ?

2. If so what was the monthly wages drawn by the deceased ?

3. What was the age of the deceased workman at the time of his death ?

4. Whether the applicants are entitled to receive the compensation ? If so what extent and against which of the opposite parties ?

8. In support of the case of the claimants, the claimant Nos. 1 and 3 were examined as P.Ws. 1 and 2 and Exs.A-1 to A-9 were marked. On behalf of the Insurance Company, its Office Assistant was examined as R.W.1 and Ex.B-1 was marked.

9. Based on the evidence on record, the Commissioner held that the deceased was working as cleaner in the Lorry No. ATR-6517 and that he died during the course of employment. Considering the claim of the claimants and the wage normally paid, in the area concerned, to a cleaner, the Commissioner fixed the salary of the deceased at Rs. 1,800/- and taking the age of the deceased as 18 years as per post-mortem report Ex.A-5, granted a total compensation of Rs. 2,03,742/-. Aggrieved by the same, the Insurance Company filed the appeal and not being satisfied with the compensation granted, the claimants filed cross-objections for enhancement of compensation.

10. The learned Counsel appearing for the Insurance Company submitted that the Commissioner without there being any evidence, held that the accident occurred during the course of employment and the same is not justifiable. He contended that without there being any documentary evidence on record, the Commissioner fixed the wages of the deceased at Rs. 1,800/-. He submitted that the minimum wages that can be awarded is Rs. 1,167/- per month and therefore the award of compensation is excessive. He contended that since the Commissioner recorded findings without there being any evidence on record, and on that ground, the appeal is maintainable. In support of his contentions, he relied on the judgments reported in Depot Manager, A.P.S.R.T.C., Nirmal Vs. Abdul Sattar, and United India Insurance Co. Ltd. Vs. Vaggu Balram and Others, .

11. On the other hand the learned Counsel appearing for the claimants/cross-

objectors contended that the Commissioner on thorough scrutiny of evidence has recorded that the accident occurred during the course of employment. He contended that the deceased is entitled to Rs. 4,000/-per month as minimum wages in view of the G.O. issued by the Central Government in the year 2000 and, therefore the Commissioner ought to have awarded Rs. 4,000/- per month instead of fixing the income of the deceased at Rs. 1,800/-per month. He submitted that if the claimants are entitled to more compensation as per law than claimed, the same can be awarded. In support of his contention, he relied on the judgment of the Apex Court in Nagappa Vs. Gurudayal Singh and Others, . He further submitted that the Commissioner did not award any interest.

12. In view of the above rival contentions it is necessary to look into the case of the claimants and the relevant evidence on record. The case of the claimants is that the deceased was working as a cleaner on the lorry bearing No. ATR-6517 under the employment of its owner and that on 7-4-1996 at about 5.30 p.m. when the lorry was going from Hyderabad to Nagpur and that when it reached shivar (ourskirts) of Dudgaon on National Highway No. 7, in front of South and North Owner and Drivers Association, the driver of the lorry asked the deceased to see the rear tyre and accidentally, the deceased fell down under the rear tyres and due to which his head was crushed and he died on the spot. To prove this fact, the brother and mother of the deceased were examined as P.Ws. 1 and 2 and they deposed to the above effect and they exhibited Exs.A-1, certified copy of F.I.R.; A-2, attested copy of scene of offence panchanama; A-3, attested copy of sketch of scene of offence; Ex.A-4 charge-sheet and; Ex.A-5 attested copy of post-mortem examination report. The owner of the lorry remained ex parte. Considering the evidence on record both oral and documentary, the Commissioner has rightly recorded that the deceased was employed by the owner of the lorry and that he died during the course of employment and I do not find any reason to interfere with the same. The decisions relied on by the Counsel for the Insurance Company in this regard, are not applicable to the facts of the present case.

13. Coming to the grant of compensation, P.Ws. 1 and 2 deposed that the deceased was earning an amount of Rs. 1,800/- per month as cleaner. However, in support of their claim no documentary evidence is produced. The owner of the lorry also remained ex parte. The Commissioner taking wages that are usually paid to a cleaner in the area in question, fixed the monthly income of the deceased at Rs. 1,800/-. Here the contention of the learned Counsel for the Insurance Company is that the Commissioner awarded compensation without there being any evidence on record and that he ought to have fixed the wages of the deceased at Rs. 1,167/- which are the minimum wages to a workman; and on the contrary the contention of the claimants is that as per the Workmen's Compensation (Amendment) Act, 2000 the minimum wages are to be fixed at Rs. 4,000/-.

14. Here it is to be seen that the amendment came into force on 8-8-2000 and

the accident occurred on 7-4-1996. Therefore, the amendment which has prospective effect, cannot be made applicable to the facts of the present case. Prior to the amendment, the minimum amount of compensation is Rs. 2,000/-. Therefore, when the Workmen's Compensation Act, 1923 itself provides for minimum amount that is to be awarded, the contention of the learned Counsel for the Insurance Company that the minimum wages of Rs. 1,167/- has to be awarded under the Minimum Wages Act, is not tenable and hence the same is rejected.

15. In the present case admittedly, no documentary evidence is produced. In the absence of any documentary evidence, the Commissioner ought to have awarded minimum amount. A learned Single Judge of this Court in the decision reported in *United India Insurance Co. Ltd. Hyderabad v. Vaggu Balram* (supra), held as under:

5. ...Court can take judicial notice of the fact that some of the employers do not even pay adequate wage to the employees taking advantage of the fact that due to scarcity of employment they would willingly work on any monthly salary by the employer. It is only to prevent such mischief by the employers, Government in certain fields of employment has been fixing the minimum wages payable to the employees. In the absence of documentary evidence relating to the wage of the deceased, I do not wish to rely on the oral evidence of RW1 and the minimum wage fixed under the Minimum Wages Act has to be taken as the salary of the deceased.

16. In view of the above, the monthly wages of the deceased, who was working as cleaner on the lorry, is fixed at Rs. 2,000/-. As already noted above, the age of the deceased is 18 years and as per Schedule IV to Section 4 of the Workmen's Compensation Act, 1923, the factor to be applied is 226.38. The claimants are granted an amount of Rs. 2,26,380/- (Rs. 2,000 x 50/100 x 226.30 : 2,26,380/-) and they are granted interest on the enhanced amount from the date of petition till realization and as ordered by the Commissioner, the insurer and the owner are jointly and severally liable to pay the compensation to the claimants.

17. Accordingly the appeal filed by the Insurance Company is dismissed and the cross-objections are allowed to the extent indicated above. No costs.