
(2003) 09 AP CK 0004

In the Andhra Pradesh High Court

Case No : CMA No's. 2963 and 3192 of 2003

United India Insurance Co. Ltd.

APPELLANT

Vs

Vaggu Balram and Others

RESPONDENT

Date of Decision : 03-09-2003

Acts Referred:

Workmens Compensation Act, 1923 — Section 4

Citation : (2004) 2 ACC 420 : (2005) ACJ 1384 : (2004) 3 ALD 156 : (2004) 101 FLR 1068

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Naresh Byrapaneni, in CMA No. 2963 of 2003 and C. Buchi Reddy, in CMA No. 3192 of 2003, for the Appellant; Naresh Byrapaneni, in CMA No. 3192 of 2003 and C. Buchi Reddy, for Respondent Nos. 1 and 2 in CMA No. 2963 of 2003, for the Respondent

Judgement

C.Y. Somayajulu, J.—Since these two appeals arise out of the same accident they are being disposed of by a common judgment.

2. Alleging that their son Sri Krishnaiah, hereinafter referred to as the "deceased", who was employed by R. Balakrishna Reddy on his truck bearing No. AP 11V 7326 as a driver on a monthly salary of Rs. 4,000/- died due to an accident that occurred on 27-11-2001 at about 2,00 a.m., out of and during the course of his employment with the said Balakrishna Reddy, V. Balaram and Laxmamma, the parents of the deceased filed WC No. 40/2002 before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad seeking compensation of Rs. 5 Lakhs on the basis that the deceased was aged about 19 years at the time of his death. Balakrishna Reddy, the employer of the deceased (the employer) admitted his employing the deceased with him and also the accident. The United India Assurance Company Limited, (the insurer) filed its counter denying the allegations in the claim petition and putting the claimants to proof of the averments in the petition. The father of the deceased examined himself as AW1 and marked Exs.A1 to A6. The

employer examined himself as RW1 and got marked Ex.R1. No oral evidence was adduced by the insurer, but Ex.D-1 was marked on its behalf. The Commissioner held that in view of the admission of RW-1 that he was paying Rs. 3,500/- per month as salary to the deceased, and in view of Ex.A-6 certificate issued by the Zilla Parishad High School, Lingal, Mahaboobnagar District, which shows the date of birth of the deceased as 14-12-1982, awarded a compensation of Rs. 3,96,165/- to the claimants. Aggrieved by the order passed against it the insurer preferred CMA No. 2963 of 2003 and aggrieved by the order of the Commissioner in not granting interest on the compensation awarded, the claimants preferred CMA No. 3192 of 2003.

3. The point for consideration are (i) to what amount of compensation the claimants are entitled to and (ii) what is the rate of interest, if any, claimants, are entitled to and from when.

4. The contention of the learned Counsel for the insurer is that since there is no documentary evidence relating to the wage being paid to the deceased the Commissioner was in error in accepting the ipsi dixit of RW1, for holding that his monthly salary was Rs. 3,500/-, Relying on *Chinna Gangappa v. B, Sanjeeva Reddy* 1999 ACJ 719 AP and *Oriental Insurance Co. Ltd. Vs. Sukumari Das and Others*, , he contended that when there is no reliable evidence to show the wage of a victim workman, wage payable as per the Minimum Wages Act only has to be taken into consideration for arriving at the compensation payable. The contention of the learned Counsel for the claimants is that since RW1 himself admitted that he was paying Rs. 3,500/- per month to the deceased there are no grounds to interfere with the finding of the Commissioner relating to the wage of the deceased. It is also his contention that claimants are entitled to interest from the date of accident and so the Commissioner was is error in not awarding interest. He placed strong reliance on *Ved Prakash Garg v. Premi Devi and Ors.* 1997 (6) ALD (SCSN); *Kerala State Electricity Board v. Valsala K.* (1999-II) LLJ 168; *Kashibhai Rambhai Patel v. Shahabhai Somabhai Parmar* 2000 (5) ALD 83 (SC) and *Divisional Manager, Oriental Insurance Company Limited, Gunutur Vs. Kotta Papaiah and another*, , in support of his contention.

5. I am unable to agree with the contention of the learned Counsel for the claimants that since RW1, the employer, admitted that he was paying Rs. 3,500/- per month as wages to the deceased, the Commissioner rightly took that amount into consideration. RW1, as employer, is bound to maintain the record of wages that are being paid to his employees. If really RW1 was paying Rs. 3,500/-, as wages, nothing prevented him from producing the documents showing payment of 3,500/- per month as wages to the deceased. 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.

6. In paragraph-24 of the order under appeal, the Commissioner stated that the wage as per the notification issued by the Government under the Minimum Wages Act would be Rs. 3,108-50 ps. So, the claimants are entitled to the compensation on the basis that the wage of the deceased was Rs. 3,108-50 ps, per month.

7. Since there is no dispute relating to the age of the deceased the compensation payable to the claimant comes to Rs. 3,51,850-11 ps. Point is answered accordingly.

Point (ii)

8. Claimants, no doubt, would be entitled to interest on the compensation due and payable to them since as per Section 4A of the Act compensation has to be paid as soon as it falls due, and if there is default on the part of the employer in paying compensation within one month from the date it falls due and the Commissioner is empowered to direct the employer to pay simple interest on the compensation payable by him. In the decisions relied on by the learned Counsel for claimants, the Supreme Court held that the insurer is liable to pay interest. In many cases that insurer would not be put on notice of the accident by the claimants or the employer. In this case also insurer was not given notice of the accident. When the insurer is not put on notice, it would be unjust to direct it to pay interest from the date of the accident. Therefore, claimants are entitled to interest at 9% per annum from the date of petition till the date of deposit. The point is answered accordingly.

9. In the result I hold that the claimants are entitled to Rs. 3,51,851-11 ps. With interest at 9% per annum from the date of petition till the date of deposit into Court from the employer and the appellant. They are also entitled to costs awarded by the Commissioner. Parties are directed to bear their own costs in these appeals.

10. The appeals are disposed of accordingly.