



**IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI  
(Special Original Jurisdiction)**

[3460]

WEDNESDAY, THE TWENTIETH DAY OF MARCH  
TWO THOUSAND AND TWENTY FOUR

**PRESENT**

**THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY  
CIVIL MISCELLANEOUS APPEAL NO: 1112/2010**

**Between:**

The National Insurance Company Limited, Anantapur. **...APPELLANT**

**AND**

G Sivamma And 3 Others and Others **...RESPONDENT(S)**

**Counsel for the Appellant:**

1. SRAVAN KUMAR MANNAVA

**Counsel for the Respondent(S):**

1. MAHESWARA RAO KUNCHEAM

2. 5912/MAHESWARA RAO KUNCHEAM

**The Court delivered the following:**

**JUDGMENT:**

The present appeal is filed under Section 30 of Employees' Compensation Act, 1923, questioning the Order dated 29.06.2010 in W.C.No.26 of 2005 passed by the Authority under Workmen's Compensation Act and Deputy Commissioner of Labour (FAC), Anantapur, Anantapur District.

2. The facts leading to the appeal are as follows:-

The respondents are the claimants and all are dependants of the deceased by name G. Nagendra, who was working as a driver under O.P.No.1 in vehicle bearing No.AP 02 U 0955 and was getting Rs.3,500/- per month as salary and Rs.50/- per day batta. On 05.03.2005 at about 11.30 a.m. while the deceased was discharging his duties during his course of employment on the instructions of O.P.No.1 went to the mechanic shop i.e. Khader Bore Well Mechanic Shop, near KVS Function Hall at Gooty Road, Anantapur, where the vehicle was being repaired. At that time, suddenly the tipper's hydraulic operated body fell on the deceased and he died due to the said incident. As the deceased died during the course of employment while discharging his duties as driver under the instructions of O.P.No.1 the application for claim was filed. A case in Cr.No.40 of 2005 was also registered under Section 174 Cr.P.C by I Town Police Station.

3. The O.P.No.1 filed counter denying the averments made in the petition except the employment of deceased G. Nagendra and that the vehicle was insured with O.P.No.2. The O.P.No.2 filed counter denying all averments including wages, the age, permit of the crime vehicle, driving license and policy particulars. It was also stated that there should be casual relationship between the accident and the employment and O.P.No.2 is not liable to pay compensation and prayed to dismiss the petition.

4. The Commissioner framed the following issues for determination:-
- i) Whether the deceased was a workman as per the provisions of the Workmen's Compensation act, 1923 and he met with the accident arising out of and in the course of his employment resulting his death?*
  - ii) What was the age of the deceased workman at the time of accident?*
  - iii) What were the wages paid to the deceased at the time of accident?*
  - iv) What is the amount of compensation payable to the deceased?*
  - v) Who are liable to pay compensation?*
5. The claimant No.1 examined herself as A.W.1 and got marked Exs.A.1 to A.6. No witnesses were and no documents were marked on behalf of the respondents.
6. The Commissioner after taking into consideration the evidence and the undisputed facts granted compensation of Rs.3,36,487/- considering the age and wages of the deceased. Hence, the appeal.
7. The substantial question urged was that whether the workman died in the course of employment as he was neither driving the vehicle nor the vehicle was in motion. The undisputed fact is that the deceased on the instructions of O.P.No.1 was attending the progress of the repairs of the vehicle at Khader Bore Well Mechanic Shop, near KVS Function Hall at Gooty Road, Anantapur and at that time, the hydraulic operated body of the tipper fell on the deceased and the deceased died on the spot.

The very fact that the deceased was attending to the works of the tipper in the mechanic shop at the instance of O.P.No.1 qualifies to be termed as in the course of employment. There is no other reason for the deceased to go to the mechanic shop to verify the progress of repairs of the tipper. Therefore, the question of law urged that the accident is not in the course of employment is of no avail and the same is rejected. As regards the other ground which was urged that while assessing compensation, minimum wages under Minimum Wages Act, 1948, alone should be taken. O.P.No.1 had filed his counter and had admitted in his cross examination that the deceased was being paid Rs.3,500/- per month as salary and Rs.50/- as batta per day. Once, the employer himself deposed about the salary particulars, it is not open for the insurance company to insist for quantification of compensation as per the wages fixed under the Minimum Wages Act, 1948 as held by Hon'ble Supreme Court in ***Mamta Devi and Others vs. Reliance General Insurance Company Limited and Another***<sup>1</sup>. The Paras 12 & 13 are extracted below for ready reference:-

*“12) Having regard to the object of the Act which envisages dispensation of social justice, we are of the considered view that the Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation fell in error in arriving at a conclusion that claimants' income is to be construed at Rs.3,900/- p.m. or the minimum wage to be computed should be at Rs.150/- per day in the absence of any proof of income. The written statement filed by*

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<sup>1</sup> 2023 SCC OnLine SC 728

*the employer would be a complete answer to this, inasmuch as it is categorically admitted by the employer that deceased was drawing Rs.6,000/- per month as wages. The deceased was a truck driver and had four mouths to feed at the time of his demise in the year 2011. By no stretch of imagination, it can be construed that income which he was earning as claimed by his wife in her statement made on oath can be construed as excessive or not commensurate with the wages earned by a truck driver in the year 2011.*

*13) Thus, the irresistible conclusion which we have to draw is, the unchallenged statement of the wife of the deceased who had deposed that her husband was earning Rs.6,000/- per month deserves to be accepted as gospel truth. We see no reason for disbelieving her statement.”*

Therefore, this ground is also rejected.

8. In view of the above, this Court does not find any merit in the appeal and the C.M.A stands dismissed.

There shall be no order as to costs. As a sequel, pending applications, if any, shall stand closed.

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**NYAPATHY VIJAY, J**

Date: 20.03.2024

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**THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY**

**CIVIL MISCELLANEOUS APPEAL NO: 1112/2010**

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