

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE

M.A. No.2162/2006

Smt. Sudha & others

Versus

Shri Madan & another

Shri J.M. Poonegar, learned counsel for the appellant.

Shri Anil K. Goyal, learned counsel for respondent No.2.

J U D G E M E N T

(Passed on this 31st day of August, 2016)

This Miscellaneous Appeal filed by appellants-claimants is directed against the award passed by learned Commissioner for Workman Compensation in case No.18/2003 dated 29.03.2006 whereby the learned Commissioner passed an award of Rs.2,44,498/-.

According to brief facts as stated by the learned Commissioner, this claim application was

filed on the ground that the deceased-Raju Falke was 20 years of age. He was working as a cleaner on the truck bearing registration No.MP-09-KB-6689. The vehicle was being used for transporting inflammable material petrol. When the tanker was being emptied on 29.09.2002, it caught fire and totally burnt. In the fire, deceased-Raju Falke sustained serious burn injuries, due to which, he died on 02.10.2002.

In the reply filed before the learned Commissioner by the Insurance company, the tanker was being used for illegal purposes at the time of accident. Adulterated petrol was loaded in the tanker. At the time of accident, the adulterated petrol was being emptied in tankers and due to such illegal activity, it caught fire and the accident took place, and therefore, as the accident took place due to illegal activities, the Insurance Company is not liable for compensation. In this case, however, no substantial questions were framed, and therefore, after going through the record of lower court, following substantial questions are framed for consideration :-

- (i) Whether the Commissioner erred

in assessing the income of the deceased @ Rs.2,254/- per month.

(ii) Whether the Commissioner erred in not taking into consideration the fact that respondent No.1 (the employer) never disputed the fact that the deceased was earning Rs.4,000/- per month.

Apart from the appeal, respondent-Insurance Company also filed a cross-objection in this matter in which following substantial question of law were raised :-

(i) Whether the Commissioner erred in holding the Insurance Company liable for compensation despite the fact that the accident occurred due to illegal activities of the deceased.

In this case, no evidence was produced before the learned Commissioner by the respondent. The only evidence was produced by the appellants, the learned Commissioner assessed income of the deceased on the basis of minimum wages prevalent

at the time of accident and held that the income of the deceased was Rs.2,254/- per month and on the basis of this income total amount of compensation was assessed @ Rs.2,44,458/- and also interest @ 9% per annum was awarded from the date of application i.e. 30.03.2003.

So far as use of tanker in illegal activity is concerned, there is no pleading of the Insurance Company. However, questions were asked during cross-examination. The learned Commissioner dealt this aspect of the case in Para-6 of the impugned award and held that when there is variation in pleading and proof, such proof cannot be taken into consideration.

Accordingly, so far as illegal activity is concerned, the inference drawn by the learned Commissioner appears to be proper and just and no interference is called for.

Coming to the point of quantum, the learned counsel for respondent No.2 argues that the deceased was only working as a cleaner and he was unskilled labourer. The wages were assessed by the Commissioner on the basis of minimum wages

prevalent at the time of accident. The wages assessed by the Commissioner appears just and proper. No evidence is produced by the appellant to show that deceased was being paid Rs.4,000/- per month by respondent No.1, and under this situation, no interference is called for in this aspect of the matter also.

The questions framed above are all answered in negative. His appeal is devoid of any force and liable to be dismissed and is dismissed accordingly.

Certified copy, as per rules.

(Alok Verma)
Judge

Chitranjan