

*** HIGH COURT OF ANDHRA PRADESH: AMARAVATI**

HON'BLE SRI JUSTICE NYAPATHY VIJAY

CIVIL MISCELLANEOUS APPEAL NO: 33/2024

% 22.03.2024

Between:

The Oriental Insurance Company Limited

... Appellant

Vs.

\$ Smt Chukkala Eshwari and Others

... Respondents

! Counsel for the petitioner: Smt. A.Jayanti

! Counsel for the Respondents : Sri Ravi Kumar Tolety

< Gist:

> Head Note:

? Cases referred:

¹ 1999 5 ALT 684

² 2006(5)SCC 513

³ 2013 (3) SCC 409

⁴ 2017(16) SCC 680

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

FRIDAY ,THE TWENTY SECOND DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

CIVIL MISCELLANEOUS APPEAL NO: 33/2024

Between:

The Oriental Insurance Company Limited **...APPELLANT**

AND

Smt Chukkala Eshwari and Others **...RESPONDENT(S)**

Counsel for the Appellant:

1.A. JAYANTI

Counsel for the Respondent(S):

1.RAVI KUMAR TOLETY

2.R BRIZ MOHAN SINGH(DIED)

The Court made the following

HON'BLE SRI JUSTICE NYAPATHY VIJAY**C.M.A.No.33 of 2024****ORDER:**

1. The present civil miscellaneous appeal is filed under section 30 of the Employees Compensation Act, 1923 against the order dated 05.06.2009 in W.C.No.25 of 2006 passed by the Assistant Commissioner of Labour, Tenali.

2. The facts leading to this appeal are as under:

The deceased-Chukkala Appa Rao worked as a driver under respondent No.5 herein on his lorry bearing No. AP - 16TV - 1557 in which the appellant was the insurer. It was pleaded that the deceased-Chukkala Appa Rao along with cleaner Modumedi Prasad had started from Nagpur to Hyderabad on 28.08.2005 with a load of iron channels and in the course of their journey, they had their dinner at Kukunurpalli Dabha and thereafter they resumed their onward journey towards Hyderabad. At that point of time, the deceased informed the cleaner that he was having pain in the chest and entrusted the lorry/trailer to drive. After reaching Grameena Bank, Kukunurpalli Village, Medak

District, the cleaner noticed that the deceased-Chukkala Appa Rao died due to heart attack. Thereupon, the case for compensation was filed by the wife and her two children and mother. It was their case that the deceased was on duty continuously and was driving the lorry for long distances and the heart attack caused to the deceased was due to stress and strain of driving the vehicle. The factum as the deceased had died enroute in the course of work, the Station House Officer, Kukunurpalli Police Station had registered Cr.No.85 of 2005 under section 174 Cr.P.C.

3. The insurance company filed their counter opposing the same. The owner of the vehicle was called absent and was set *ex parte* on 26.06.2006. In the course of enquiry, A.Ws.1 and 2 were examined i.e. wife of the deceased and husband of the owner of the vehicle Sri P.V.Durga Reddy and Exs.A.1 to A.6 were filed to support their case for compensation.

4. The Commissioner, after considering the oral and documentary evidence, passed an award granting compensation of Rs.2,66,976/- vide order dated

05.06.2009. In this case, no oral or documentary evidence was filed by the insurance company.

5. In the grounds of appeal, the only question that was raised was that a heart attack cannot be considered as a death arising out of or in the course of employment.

6. **On the merits of the case:** The Commissioner in his order had referred to a judgment of this Court reported in ***Depot Manager, APSRTC, Karimnagar v. Gurrapu Anjamma***¹, wherein it was opined that the death by heart attack was covered under Employees Compensation Act, 1923. This aspect was further reiterated by Hon'ble Supreme Court in ***Jyothi Ademma v. Plant Engineer, Nellore & Another***², wherein, it was opined that if the employment is the contributory cause or has accelerated the death or if the death was due not only to the disease but also disease coupled with employment, then the death could be said to be in the course of employment.

¹ 1999 5 ALT 684

² 2006(5)SCC 513

7. A similar view on similar facts was taken by the Hon'ble Supreme Court in ***Param Pal Singh v. National Insurance Co. Ltd and another***³. In that case, the deceased was driving a truck. He felt chest pain and had stopped the truck safely. Immediately he was rushed to the hospital. But he died. After postmortem it was opined that the cause of the death was heart attack. In that factual background it was contended that death of the deceased was due to natural causes and the death had no casual connection to his employment. The Hon'ble Supreme Court after considering the English cases and Indian cases and after referring to Section 3(1) of the Employees Compensation Act held at para 29 as under:

'29. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was causal connection to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45-year-old driver meets with his unexpected death, may be due to heart

³2013 (3) SCC 409

failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 km away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental resources and endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his lifespan. Such an “untoward mishap” can therefore be reasonably described as an “accident” as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business.’

8. In this case, the fact that death by heart attack occurred in the course of driving the lorry from Nagpur to

Hyderabad is a clear indicative of the death having been caused due to employment induced stress and there can be no two ways about it. Hence, this Court does not find any grounds or any substantial questions of law to interfere with the compensation awarded by the Commissioner.

9. **Issues which need to be examined under the Act, 1923 and Social security code 2020:** The appeal under Section 30 of the 1923 Act, though restricted to substantial questions of law, the monetary value of the appeal should not be less than Ten Thousand Rupees (Rs.10,000/-) as amended by Act, 11 of 2017. Earlier, thereto, the minimum value of appeal was Rupees Three Hundred (Rs.300/-).

10. The Social Security Code, 2020 was enacted to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organized or unorganized or any other sectors and for matters connected therewith or incidental thereto. The provisions of the 1923 Act were bodily incorporated in the said Code, 2020 at Chapter VII.

11. The quantification for filing appeal is specified in the first proviso to Section 99 of the Social Security Code, 2020. The Section 99 of the Code, 2020 is a replica of section 30 of the Employees Compensation Act, 1923.

12. The quantification of minimum amount for filing appeal under the above Act, 1923 and Code, 2020 appears to be a direct import of un-amended Section 173(2) of the Motor Vehicles Act, 1988. The un-amended Section 173 (2) of the Motor Vehicles Act, 1988 also prescribed Rupees Ten Thousand (Rs.10,000/-) to be the minimum value for filing appeal before this Court. In 2019, a substantial number of provisions of the Motor Vehicles Act, 1988 were amended vide Act 32 of 2019 and the Section 173(2) of the Act was also amended increasing the minimum value of Appeal to Rupees One Lakh (Rs 1,00,000/-).

13. In that context, a similar amendment is required to be incorporated to section 30 of the Employee Compensation Act, 1923 and Section 99 of the Social Security Code, 2020 taking into consideration present day

value of medical treatment and the cost of living in the event of death of an employee.

14. Apart from that, a third party claimant under the Motor Vehicles Act, 1988 appears to be better placed in the manner of computation of compensation *vis-a-vis* a claimant/ employee under the Act of 1923. A preliminary comparison of the quantification of compensation prescribed under Section 4 of the Act of 1923 as bodily incorporated in Section 76 of the Code, 2020 and judicial pronouncements of Hon'ble Supreme Court specifying heads for quantification of compensation under Motor vehicles Act, 1988 i.e. loss of estate, loss of consortium, funeral expenses, future prospects etc would demonstrate that the claimants under the Motor Vehicles Act get substantially higher compensation than under Act of 1923. These heads for computing compensation under the Motor Vehicles Act which were crystallized by a larger bench of Hon'ble Supreme Court in ***National Insurance Company Ltd. v. Pranay Sethi***⁴ are not available for calculating

⁴ 2017(16) SCC 680

compensation of a claimant/employee with certainty of monthly income under Act of 1923 and Code, 2020.

15. A stark difference is that in case of death of an employee, the section 4(1) (a) of the Act of 1923 statutorily prescribed only 50% of the monthly wages of the deceased to be taken into consideration for multiplying by the relevant factor. The section 4(1) (a) of the Act is extracted below for ready reference;

“Section 4. Amount of compensation.—(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:—

***(a) where death results from the injury
an amount equal to fifty per cent of the monthly wages of the deceased employee multiplied by the relevant factor;***

or

an amount of 4 [one lakh and twenty thousand rupees], whichever is more”

16. The Section 76 of Social Security Code,2020 is verbatim copy was Section 4 of the Employees Compensation Act,1923 and the same is extracted for ready reference

“Section 76 Amount of compensation: (1) Subject to the provisions of this Chapter, the amount of compensation shall be,—

***(a) where death results from the injury, an amount equal to fifty per cent of the monthly wages of the deceased employee multiplied by the relevant factor or an amount as may be notified by the Central Government from time to time, whichever is more.*”**

17. Under the Motor Vehicles Act,1988, compensation in the event of death is taken @ 3/4th of the monthly income of the deceased and 50% income in case,deceased was a bachelor for quantification of compensation under the head loss of estate as per the constitutional bench decision referred supra.

18. The variance in compensation is substantial and hypothetically, if the age of the deceased is 30 yrs with income/wages of Rs 20,000/-. The calculation for for compensation under the loss of estate under Motor Vehicles Act,1988 as per the constitutional bench judgment referred supra is given below:

MONTHLY INCOME-:	Rs 20,000/- (SELF –EMPLOYED/ FIXED SALARIED)
ADDITION TO INCOME TO FUTURE PROSPECT(@40% DECEASED BEING LESS THAN 40 YEARS)	Rs.28000/- (Rs.20000/-+Rs.8000/-)
ANNUAL INCOME(28000*12)	Rs.336000/-
DEDUCTION TOWARDS PERSONAL & LIVING EXPENSES(1/3)	Rs.224000/- (Rs.336000-Rs.112000)
MULTIPLIER BASED ON AGE OF 30 YEARS	17
AMOUNT OF COMPENSATION	Rs 38,08,000/- (Rs 224000x17)

19. In comparison, the compensation formula for the same individual under the Act of 1923 as prescribed under Section 4(1) (a) R/w Schedule IV is as under:

$$50/100 \times \text{Rs.}20,000/- \times 207.98 = \text{Rs } \mathbf{20,79,800/-}.$$

20. There is almost 50% variance in the quantification of compensation and this appears to be discriminatory. The tragic reason for claiming compensation i.e “**accident**” is the same in both enactments and it is perplexing as to why there is difference in the quantification of compensation. A sense of parity and equality should be maintained while calculating the compensation under respective enactments as claimants belong to one class i.e “**sufferers of an accident**”. The employee cannot be placed in a disadvantageous position *vis-a-vis* a third party claimant under the Motor Vehicles Act, 1988. These are aspects which the Central Government should examine in consultation with the Law Commission of India at the earliest to remedy the state of affairs.

21. Coming back to the facts of this appeal, as no substantial questions of law are made out by the appellant, the same is dismissed. No order as to costs. As a sequel, the miscellaneous petitions if any shall stand dismissed.

NYAPATHY VIJAY,J

Date: 22.03.2024
KLP

Note: L.R. Copy be marked