

**(2004) 11 AP CK 0033**

**Andhra Pradesh High Court**

**Case No:** C.M.A. No. 1652 of 2002

New India Assurance Company  
Limited

APPELLANT

Vs

Devalla Chinnaiah and Others

RESPONDENT

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**Date of Decision:** Nov. 11, 2004

**Acts Referred:**

- Workmens Compensation Act, 1923 - Section 30

**Citation:** (2005) 2 ACC 856 : (2006) ACJ 1874 : (2005) 3 ALT 28 : (2005) 106 FLR 231

**Hon'ble Judges:** L. Narasimha Reddy, J

**Bench:** Single Bench

**Advocate:** Kota Subba Rao, for the Appellant; Serla Pandari, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

L. Narasimha Reddy, J.

This Civil Miscellaneous Appeal is filed u/s 30 of the Workmen's Compensation Act (for short "the Act") assailing the Order, dated 30-09-2000, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad (for short "the Commissioner"), in W.C.No. 94 of 1998.

2. Respondents 1 to 4 submitted a claim alleging that one Devulla Venkati, son of respondents 1 and 2 and brother of respondents 3 and 4, was employed as a labourer under the 5th respondent to work on a Tractor bearing No. AP-25-B-992 and Trailer bearing No. AP-25-B-993. It was stated that on 24-03-1998, on account of rash and negligent driving of the Tractor by the driver, Devulla Venkati sustained injuries and subsequently died on account of the same. Crime No. 15 of 1998 is said to have been registered in the Police Station, Kundanpur. They pleaded that the deceased was aged about 20 years and was being paid daily wages. The appellant herein, the insurer of the vehicle, resisted the claim.

3. On behalf of respondents 1 to 4, P.Ws.1 to 3 were examined and Exs.A-1 to A-8 were marked. The 5th respondent filed counter affidavit denying the relationship of employer and employee between himself and the deceased. The 5th respondent was examined as R.W.1 and Exs. B-1 to B-3 were marked. No evidence was adduced on behalf of the appellant. On a consideration of the pleadings and evidence before him, the Commissioner awarded a sum of Rs. 2,01,600/- as compensation.

4. Sri K. Subba Rao, learned counsel for the appellant, submits that since the deceased was not married, the relevant age factor stipulated under Schedule IV to the Act ought to have been chosen with reference to the years of remaining longevity of respondents 1 and 2. He submits that though the Schedule prescribes the factors on the basis of the age of the workman for arriving at the compensation, the principle adopted in determination of claims under the Motor Vehicles Act needs to be followed for the claims under the Act. He also submits that when the employer himself denied the relationship, there was no basis for the Commissioner to award the compensation.

5. Sri S. Pandari, learned counsel for the contesting respondents, on the other hand, submits that the amount payable under the Act is virtually the estate of the workman and there is no scope for applying the principle underlying the Motor Vehicles Act to the proceedings under the present Act. He submits that though the 5th respondent filed counter affidavit denying the relationship of employer and employee, in his evidence as R.W.1, he admitted that the deceased was employed with him.

6. One of the contentions urged on behalf of the appellant is that there is nothing on record to disclose that the deceased was employed with the 5th respondent to work on the Tractor. For this purpose, reliance is placed on the counter affidavit filed by the 5th respondent, wherein he denied the allegation of respondents 1 to 4. If the 5th respondent stuck to his stand during the course of his evidence, respondents 1 to 4 would have been under obligation to lead further evidence to prove that the deceased was employed with R.W.1. It was elicited from R.W.1 that the deceased was employed with him. Therefore, the denial made by him in the counter affidavit cannot be said to have been substantiated. Correspondingly, the plea of respondents 1 to 4 that the deceased was employed with R.W.1 stands established.

7. The contention of the appellant that the age of respondents 1 and 2 has to be taken into account for choosing the relevant factor in determination of the compensation is difficult to be accepted. The analogy drawn by him on the basis of the principles followed in determining the compensation in the claims under the Motor Vehicles Act is not at all relevant. In the case of claims under the Act, there exists a contract of employment between the employer and the employee. An employer is made to discharge the contractual obligations coupled with the statutory liability in the event of death or injury to the workman. Such is not the case

with the claims under the Motor Vehicles Act. The claim thereunder is in the realm of torts and not out of contractual obligations. Further, a reading of the provisions of the Act discloses that the amount is payable even where there does not exist any claim and thereby such amount would become the estate of the deceased. For all practical purposes, it deserves to be treated on par with the death-cum-retirement benefit of the employees under the relevant statutory provisions. Therefore, it is not possible or permissible to treat the age of the dependants of an unmarried workman as the basis to select the factor in Schedule IV to the Act. Such a course would defeat the very object underlying the Act.

8. For the foregoing reasons, the Civil Miscellaneous Appeal is dismissed. There shall be no Order as to costs.