

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
C.M.A.No.1082 of 2005

JUDGMENT:

1 This appeal is filed under Section 30 of Workmen's Compensation Act, 1923 challenging the order dated 12.09.2005 passed in W.C.No.77 of 2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I Circle, Guntur whereunder the Commissioner awarded compensation of Rs.98,144/- as against the claim of Rs.4.00 lakhs claimed by the applicant.

2 For the sake of convenience, the parties to this appeal, will hereinafter be referred as they are arrayed before the lower authority.

3 The facts, which are relevant, for disposal of the present appeal are as follows:

4 On 01.10.2004 the applicant was working as spare driver on the lorry bearing No.AP 7 V 5297 which met with an accident. Due to the accident, the applicant sustained fractures and injuries on various parts of the body. The applicant took treatment as inpatient for a long time and has sustained permanent disability. By the time of accident, the applicant was aged about 35 years and used to earn Rs.4,000/- p.m. as lorry driver. Due to the disability, the applicant was not in a position to driver the lorry. By the date of accident, the applicant was working as spare driver under the control of the Opposite Party No.1. The lorry bearing No.AP 7 V 5297 which belongs to the Opposite Party No.1 was insured with the Opposite Party No.2. Hence the applicant filed the claim petition seeking compensation of Rs.4.00

lakhs from the Opposite Party Nos.1 and 2 jointly and severally.

5 Opposite Party No.1 remained ex parte. Opposite Party No.2 opposed the claim by way of filing counter denying all the material averments made in the claim petition, including the age and income of the applicant. The burden of proof lies on the applicant to establish that by the time of accident, he was working under the control of the Opposite Party No.1. The amount of compensation claimed under various heads is highly excessive and exorbitant. Hence the petition may be dismissed.

6 Basing on the rival contentions, the Commissioner framed three issues. During the course of enquiry, on behalf of the applicant A.Ws.1 to 3 were examined and Exs.A.1 to A.7 were marked. On behalf of the Opposite Parties no oral or documentary evidence was adduced.

7 Basing on the material available on record, the Commissioner allowed the petition in part by awarding an amount of Rs.98,144/- as compensation payable to the applicant by way of demand draft drawn in favour of the Commissioner for Workmen's Compensation & Deputy Commissioner of Labour, Guntur within 30 days from the date of receipt of the order. As stated supra, not being satisfied with the amount of compensation awarded, the applicant filed the present appeal.

8 Heard both sides.

9 The contention of the learned counsel for the applicant is two fold:

i. The learned Commissioner failed to consider that the applicant is incapacitated to earn anything due to sustaining of 25% permanent partial disability.

ii. The learned Commissioner ought to have assessed the loss of earning capacity of the applicant as 100% instead of 20% to 25% in view of his avocation i.e. driver of the lorry.

10 The oral testimony of A.Ws.1 and 3 clearly reveals that by the time of accident, the applicant was working as a spare driver on the lorry bearing No.AP 7 V 5297 which belongs to the Opposite Party No.1. The oral testimony of A.Ws.1 and 2 coupled with Exs.A.5, A.6 and A.7 reveals that the applicant sustained fracture. As per the oral testimony of A.W.2, the applicant sustained 20% to 25% permanent partial disability. As per the testimony of A.W.2 both legs of the applicant were shortened by one inch and half inch respectively. I have carefully perused the case sheet maintained by A.W.2. As per the case sheet, the applicant sustained fracture to left tibia only. There is no mention about one inch shortening of the left leg and half inch shortening of right leg of the applicant in the case sheet. A.W.2 for the first time deposed before the learned Commissioner about the shortening of left and right legs of the applicant. If really the left and right legs of the applicant were shortened by one inch and half inch respectively, the same would have been reflected in the case sheet maintained by A.W.2. If really the applicant has sustained permanent disability, what prevented him to approach a medical board and obtain disability certificate? In order to help the injured person, it is not uncommon to exaggerate the percentage of disability sustained by the injured person by the doctor under whom the injured has taken treatment.

11 The material available on record falls short to establish that the applicant was unable to discharge the duties as driver as he used to discharge prior to the accident. Due to 20% to 25%

functional disability to the left and right legs of the applicant, the applicant may not be in a position to discharge his duties with same vigour and strength as he used to discharge his duties prior to the accident. Though the applicant sustained 20% to 25% functional disability, the learned Commissioner has assessed the loss of earning capacity of the applicant as 25%. Taking into consideration the recitals of G.O.Ms.No.30 dated 27.07.2000, the learned Commissioner determined the wages of the applicant as Rs.3,785/- p.m. By following the procedure contemplated under the W.C. Act, the learned Commissioner has awarded an amount of Rs.98,144/- as compensation to the applicant. Absolutely, there is no cogent and convincing material available on record to establish that the applicant has not been discharging the duties as driver. In the absence of such convincing evidence, it is not possible for the Court to arrive at a conclusion that the applicant was incapacitated to discharge the duties of the driver. The learned Commissioner has considered the oral and documentary evidence as well as the other material available on record in right perspective and arrived at a conclusion that the loss of earning capacity of the applicant is only 25%.

12 There are no grounds much less valid grounds to interfere with the well considered order passed by the learned Commissioner. I see no merits in this appeal and the appeal is devoid of merit.

13 In the result, the appeal is dismissed. Consequently, miscellaneous petitions, if any, pending in this miscellaneous appeal, shall stand closed. No order as to costs.

T. SUNIL CHOWDARY, J

Date: 21.07.2015
Kvsn