

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.903 of 2005

JUDGMENT:

This civil miscellaneous appeal is filed under Section 30 of the Workmen's Compensation Act, challenging the order dated 18.12.2004, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar, (for short, the Commissioner) in W.C. Case No.10 of 1999, wherein and whereby the claim of the applicant for Rs.2,00,000/- was allowed.

2. The parties will be hereinafter referred to as they are arrayed by the Commissioner in W.C. Case, for the sake of convenience.

3. The facts leading to filing of the present appeal are briefly as follows: On 12.12.1997, the applicant was proceeding to Guntur from Kalwakurthy as the cleaner on lorry bearing No.ADT 8526 belongs to the first respondent. When the lorry reached near Kundalapahad gate, the driver of the lorry had driven the same in a rash and negligent manner and dashed against a stationed lorry bearing No.AHH 2257. Due to the accident, the applicant sustained fractures and injuries on various parts of the body. Immediately after the accident, the applicant was shifted to Government Hospital, Devarakonda and after first aid, he was referred to Osmania General Hospital, Hyderabad, where he took treatment as inpatient for a period of 45 days. By the time of the accident, the applicant was aged about 18 years and used to earn Rs.1,500/- per month towards salary and Rs.50/- per day towards batta. The Station House Officer, Devarakonda Police Station registered a case in crime No.191 of 1997 for the offences punishable under Sections 304-A, 337 and 338 IPC against the driver of lorry bearing No.ADT 8526. Due to the fractures, the applicant sustained disability and thereby lost his earning capacity. The lorry bearing No.ADT 8526, which belongs to the first respondent, was insured with

the second respondent as on the date of the accident; therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2,00,000/- to the applicant.

4. The first respondent filed counter admitting the factum of the accident and employer-employee relationship between him and the applicant. It is further alleged that lorry bearing No.ADT 8526 was insured with the second respondent as on the date of the accident and therefore, the second respondent alone has to pay compensation to the applicant.

5. The second respondent filed counter denying all the averments made in the application, *inter alia*, contending that the applicant did not incur any disability. It is contended that by the time of the accident, the applicant was not earning Rs.1,500/- per month. The compensation claimed by the applicant is on higher side.

6. Basing on the above pleadings, the Commissioner framed the following issues:

- (1) Whether the applicant Mr.Dasarla Krishnaiah was the workman of respondent No.1 on the date of the accident i.e., on 13.12.1997 and injuries were caused to the applicant by accident arising out of and in the course of employment?
- (2) Whether the amount of compensation claimed is due or any part of it?
- (3) Whether the respondents are liable to pay compensation?

7. During the course of enquiry, on behalf of the applicant, A.Ws.1 to 3 were examined and Exs.A1 to A5 were marked. On behalf of the respondents, no oral evidence was adduced but Ex.B1 was marked on behalf of second respondent.

8. Basing on the oral, documentary evidence and other material available on record, the learned Commissioner arrived at a conclusion that the applicant is entitled for compensation amount of Rs.2,00,000/- and allowed the application. Feeling aggrieved by the order of the learned Commissioner, the second respondent preferred the present

appeal.

9. The contention of the learned counsel for the appellant–second respondent is two fold:

(1) the learned Commissioner misconstrued G.O.Ms.No.71 and determined the salary of the applicant as Rs.1,527/-per month instead of Rs.1,299/-; and

(2) the learned Commissioner committed error while determining the loss of earning capacity of the applicant as 100% though the applicant sustained only 70% disability.

Per contra, learned counsel for the first respondent–applicant submitted that the learned Commissioner rightly considered various provisions of the Workmen’s Compensation Act and awarded just and reasonable compensation and there are no grounds to interfere with the order of the learned Commissioner.

10. Now the point that arises for consideration in this appeal is:

Whether the Commissioner has committed any irregularity while computing the loss of earnings of the applicant?

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Point:

11. There is no dispute between the parties with regard to the relationship of ‘employer and employee’ between the first respondent and the applicant. It is also an admitted fact that the lorry which belongs to the first respondent was insured with the second respondent as on 12.12.1997 under Ex.B1 policy.

12. In the application, it is categorically mentioned that the applicant was aged about 18 years as on the date of the accident. As rightly pointed out by the learned counsel for the appellant-second respondent in the cause title of the application the age of the applicant was mentioned as 19 years. Though he was aged about 18 years as on the date of the accident, he may be aged 19 years by the time of filing of the application. It is needless to say that the Commissioner or

the court has to take into consideration the age of the applicant as on the date of the accident. As pointed out by the learned counsel for the second respondent, the Commissioner inadvertently mentioned G.O.Ms. Number as '91' instead of '71'. The relevant multiplier applicable for the age of 18 years is 226.38.

13. The predominant contention of the learned counsel for the second respondent is that even as per the testimony of A.W.2 (Orthopedic Doctor) and A.W.3 (Ophthalmologist), the petitioner incurred disability of 70% only; therefore, the Commissioner ought to have taken the loss of earnings of the applicant as 70% only instead of 100%. A careful perusal of the testimony of A.W.2 and A.W.3 clearly reveals that the applicant sustained 30% disability due to loss of left eye sight, and 40% disability due to fracture to left femur. As seen from the testimony of A.W.2 and A.W.3, the applicant is not in a position to attend the duties of cleaner in view of the nature of the fractures sustained by him. It is a known fact that in order to perform the duties of a lorry cleaner, lot of physical strength and stamina are required. With 40% functional disability to left leg, it may not be possible for the applicant to do the duties of a lorry cleaner. No owner of lorry engages the services of the applicant as a cleaner as he is unable to climb lorry or any other motor vehicle like a normal person. The testimony of A.W.2 clearly reveals that the applicant is unable to walk. By any stretch of imagination, it cannot be presumed that a person, who is unable to walk, can discharge duties as cleaner of a lorry.

14. Medical practitioner is competent person to speak about the functional disability as well as loss of earning capacity. It appears that the learned Commissioner has scrutinized the testimony of A.W.2 and A.W.3 in order to ascertain whether the applicant is capable of discharging the duties of a cleaner or not. The finding of the learned Commissioner that the loss of earning capacity of the applicant can be taken as 100% is supported by medical evidence and other material

available on record. The learned Commissioner has assigned cogent and valid reasons to his findings. I am fully agreeing with the findings recorded by the learned Commissioner so far as the loss of earning capacity of the applicant is concerned.

15. The learned counsel for the second respondent has drawn my attention to G.O.Ms.No.71, W.D.C.F. Lab-II Department, dated 16.4.1991. As per the said G.O., basic wage of a cleaner is shown as Rs.675/- and the Variable Dearness Allowance is (Rs.156 X 4) Rs.624/-. Thus, the salary of the cleaner is (Rs.675 + Rs.624) Rs.1,299/- per month and not Rs.1,527/-. The learned Commissioner has committed mistake while taking the monthly salary of the applicant as Rs.1,527/- instead of Rs.1,299/- as rightly pointed out by the learned counsel for the second respondent. The compensation for which the applicant is entitled is as follows:

$$\text{Rs.1,299} \times 60/100 \times 226.38 \times 100 = \text{Rs.1,76,440.57}$$

Therefore, the compensation amount is rounded off to Rs.1,76,441/-.

16. Having regard to the facts and circumstances of the case, I am of the considered view that the applicant is entitled to compensation of Rs.1,76,441/- only but not Rs.2,00,000/- as awarded by the learned Commissioner. Accordingly, the point is answered.

17. In the result, the appeal is allowed in part by restricting the compensation amount to Rs.1,76,441/- (Rupees one lakh seventy six thousand four hundred and forty one only). The applicant is entitled to rate of interest as awarded by the learned Commissioner. There shall be no order as to costs. Miscellaneous applications, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 08.7.2015
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