

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.3009 of 2003

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JUDGMENT:

This appeal is preferred against orders dated 16.07.2003 in W.C.No.115 of 2002 on the file of the Commissioner for Women's Compensation & Assistant Commissioner of Labour-II, Hyderabad.

2. Brief facts leading to this appeal are as follows:

First respondent herein submitted application to the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour-II, Hyderabad contending that he received injuries on 19.05.2002 in a accident during course of his employment as driver of jeep bearing No.AP 23B-3405 belonging to 2nd respondent herein and due to accident he sustained grievous injuries and that he was shifted to Osmania General Hospital, Hyderabad and thereafter he took treatment with Dr G. Subhash Rao. He further contended that he became totally disabled and entitled for compensation of Rs.2,00,000/- with interest. Second respondent herein filed counter admitting relationship of employee and employer between them i.e., 1st and 2nd respondents herein and stated that he was paying Rs.3,000/- per month as salary and that the vehicle is insured with appellant herein under policy No.051403/31/01/61373 and the policy is in force as on the date of accident.

3. Insurance company filed counter disputing the claim of 1st respondent herein and contended that applicant was not an

employee within the meaning of the Act and there is no employee and employer relationship between 1st and 2nd respondents herein. It is further contended that applicant shall strictly prove that he has got valid driving licence and that he sustained injuries in the accident. It is further contended that claim of applicant is excessive and exorbitant.

4. On these contentions, Commissioner for Workmen's Compensation conducted enquiry. During which, two witnesses are examined and 9 documents are marked on behalf of 1st respondent herein and one witness is examined on behalf of 2nd respondent herein and one (1) document is marked. On behalf of appellant herein no witness is examined and one(1) document is marked and on a over all consideration of oral and documentary evidence, the lower authority granted Rs.1,56,648/- by taking wages of the injured at Rs.2,695/- per month and disability at 45%. Aggrieved by order of the lower authority, insurance company preferred present appeal.

5. Advocate for appellant submitted that the lower authority failed to notice that the discharge certificate issued by Osmania General Hospital marked as Ex.A3 conclusively proves that claimant has no disability but the lower authority accepted the disability assessed by a private doctor who issued Ex.5-disability certificate which is contrary to settled norms. He further submitted that the Commissioner failed to see that the prescriptions given by AW.2 including disability certificate-Ex.A5 are false and he is a stock witness for all the cases of this nature. He further submitted that claimant has not suffered any kind of disability therefore considering 45% disability by the Commissioner for Workmen's Compensation is illegal and same is

liable to be set aside.

6. Heard argument of advocate for appellant. Other side has not submitted any arguments.

7. Now the point that would arise for my consideration is:

Whether the order of the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour-II, Hyderabad is legal, proper and correct?

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POINT:

8. As already referred above, it is the specific case of claimant i.e., first respondent herein that he sustained injuries on 19.05.2002 in a accident that occurred during course of his employment as driver of the jeep belonging to 2nd respondent herein. Though appellant herein contended that there is no relationship of employee and employer between 1st and 2nd respondents herein, it has not produced any evidence, to support the said plea. On the other hand 1st respondent is examined as AW.1 and 2nd respondent is examined as AW.2 and from the evidence of these two witnesses, it is clearly established that the injured was under the employment of 2nd respondent herein on 19.05.2002 and he sustained injuries during course of employment.

9. Here the main objection raised is that disability taken into consideration by the lower authority is not correct, as the disability certificate was issued by a private doctor but not by a Medical Board.

10. Learned advocate for appellant submitted that AW.2 has issued Ex.A5-disability certificate only to help claimant and

Ex.A3-discharge summary issued by Osmania General Hospital, nowhere pointed out any disability.

11. I have perused the material including the evidence of AW.2. In his evidence, he deposed that he issued Ex.A5 certificate after examining the injured both clinically and radiologically. He also deposed after verifying the x-rays and clinical reports, he assessed the disability at 45% and that disability is partial and permanent in nature and injured will not be able to walk properly and he cannot do any work. Except putting suggestions to this witness on behalf of insurance company, nothing was elicited to support the contention that percentage of disability assessed by him is in correct.

12. According to claimant, who is examined as AW.1, he was referred to Osmania General Hospital immediately after the accident and he filed discharge summary issued by Osmania General Hospital, which is marked as Ex.A3. In this, it is recorded that he sustained injury to left femur and treatment given to him. As seen from this discharge summary, x-rays were taken and he was in the hospital from 19.05.2002 to 10.06.2002 and it appears a surgery was also done to the patient on 31.05.2002.

13. Now according to the evidence of AW.2, on verification of these reports i.e., discharge summary, x-ray reports, and on physical examination, he assessed disability at 45%. According to Ex.A5 report also, AW.2 noticed injury of fracture shaft of left femur. So the injury noticed by AW.2 and the injury recorded in Ex.A3-discharge summary is one and the same and there is no contradictory material with regard to nature of injury. When the insurance company has not produced any evidence to show that disability assessed by AW.2 is incorrect, argument of learned

counsel for appellant with regard to disability assessed by AW.2 cannot be accepted. Further as seen from the record, this AW.2 is an Orthopedic Surgeon and specialist in the field.

14. Considering these aspects, lower authority accepted the percentage of disability assessed by medical officer Dr G. Subhash Rao, and I do not find any wrong appreciation of evidence or material on record by lower authority in accepting the disability at 45%, therefore objection of appellant with regard to disability taken into consideration by the lower authority in calculating the compensation cannot be accepted.

15. For these reasons, I am of the view that the lower authority has rightly granted compensation by taking the disability at 45% and that there are no grounds to interfere with the findings of the lower authority.

16. Accordingly the Civil Miscellaneous Appeal is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 20-03-2015.
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