

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY
CIVIL MISCELLANEOUS APPEAL No.2379 of 2002
AND
CROSS-OBJECTIONS (S.R.) No.42556 of 2007

JUDGMENT:

This civil miscellaneous appeal is filed under Section 30 of the Workmen's Compensation Act, challenging the order dated 30.03.2002, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, (for short, the Commissioner) in W.C. Case No.367 of 1997, wherein and whereby an amount of Rs.81,890/- was awarded as against the claim of Rs.2,00,000/-.

2. The parties will be hereinafter referred to as they are arrayed before 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 01.12.1996 as per the instructions of Opposite Party No.1, the applicant along with driver loaded the rice bags in the lorry bearing No.AP 13 T 2378 at Nizamabad to unload the same at Hyderabad. When the lorry was stopped in Old gunj of Nizamabad, the applicant put a wooden piece beneath the wheels of the lorry in order to prevent the lorry from moving forward. As per the directions of the driver, when the applicant tried to remove the wooden piece, the driver of the lorry had driven the lorry in a rash and negligent manner due to which the lorry ran over the hand of the applicant. Due to the accident, the applicant sustained crush injury to his right hand. Immediately after the accident, the

applicant was shifted to Dr.Devidas Hospital, Nizamabad, wherein he took treatment as inpatient for 21 days and four fingers of his right hand were amputated. By the time of accident, the applicant was working as an employee of Opposite Party No.1. The lorry bearing No.AP 13 T 2378, which belongs to Opposite Party No.1 was insured with Opposite Party No.2 at the relevant point of time. Therefore, Opposite Parties No.1 and 2 are jointly and severally liable to pay compensation to the applicant.

4. The Opposite Party No.1 remained *ex parte*. The Opposite Party No.2 filed counter denying all the averments made in the application including the relationship of employee and employer between the applicant and the Opposite Party No.1. The Opposite Party No.1 did not inform the factum of accident to Opposite Party No.2 with an intention to help the applicant. The present application is not maintainable without establishing the employee and employer relationship between the applicant and the Opposite Party No.1. The amount of compensation claimed by the applicant is highly excessive. Hence, the application may be dismissed.

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

- (1) Whether the applicant is a workman within the meaning of the Act and Whether the accident occurred during the course of employment under Opposite Party No.1?
- (2) If so, to what relief the applicant is entitled and against which of the Opposite Parties?

6. During the course of enquiry, on behalf of the applicant, P.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the Opposite Party No.2, no one was examined, but Ex.B1 was marked.

7. On appraising the oral and documentary evidence and other material available on record, the learned Commissioner has arrived at a conclusion that by the time of accident, the applicant was working as an employee on the lorry bearing No.AP 13 T 2378 of the Opposite Party No.1 and allowed the application in part by awarding compensation of Rs.81,890/-. Feeling aggrieved by the orders of the learned Commissioner, the Opposite Party No.2 has preferred C.M.A. No.2379 of 2002 whereas the applicant preferred Cross-Objections (S.R.) No.42556 of 2007.

8. The learned counsel for the appellant—Opposite Party No.2 submitted that the learned Commissioner failed to appreciate that there is no employee and employer relationship between the applicant and Opposite Party No.1 and therefore, the application filed by the applicant is not maintainable under law. He further submitted that the learned Commissioner has not considered the monthly income of the applicant in right perspective and awarded compensation on assumptions and presumptions.

9. The oral testimony of P.W.1 clearly reveals that on the date of accident, he was engaged as a workman on the lorry bearing No.AP 13 T 2378, which belongs to Opposite Party No.1. His testimony further reveals that he sustained crush injury and his right hand four fingers were amputated. The recitals of Ex.A1 first information report and Ex.A3 charge sheet support the version of P.W.1 so far as the manner of the accident and sustaining of injuries by the applicant are concerned. In the cross-examination of P.W.1, nothing is elicited to shake his testimony on these aspects. Likewise, the Opposite Party No.2 has not adduced rebuttal evidence to demolish the stand taken by the applicant on these two aspects.

10. The recitals of Exs.A1 and A2 clearly reveal that by the time of accident, the applicant was working as an employee on the lorry bearing No.AP 13 T 2378, which belongs to Opposite Party No.1. Basing on the oral and documentary evidence available on record, this Court can safely arrive at a conclusion that there is a relationship of employee and employer between the applicant and Opposite Party No.1 at the material point of time.

11. The oral testimony of P.W.2 clearly reveals that the applicant sustained 50% partial permanent disability due to amputation of four fingers of his right hand. Ex.A6 is the disability certificate. In the cross-examination, P.W.2 denied the suggestion that the percentage of loss of earning capacity claimed by the applicant is on higher side. As per Part II of schedule I of Workmen Compensation Act, the percentage of loss of earning capacity is 50% in case of amputation of four fingers of the hand. By examining P.W.2 and marking Ex.A6 the applicant clearly established that he incurred 50% disability.

12. Basing on the material available on record, the learned Commissioner determined the loss of earning capacity of the applicant as 40%. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the applicant that the learned Commissioner committed gross error while assessing the loss of earning capacity of the applicant as 40%. Even as per the provisions of the Workmen Compensation Act, the loss of earning capacity is not less than 40% in case of amputation of four fingers of the workman. The learned Commissioner has taken the wages of the applicant as Rs.1800/- per month. Even by attending coolly work, one may get not less than Rs.60/- per day in the year 1996. Viewed from any angle, I am unable to accede to the contention of

the learned counsel for the applicant that the learned Commissioner has committed grave error while taking the monthly income of the applicant as Rs.1800/- per month. By the time of accident, the applicant was aged about 38 years. Therefore, the Commissioner has taken the multiplier as '189.56'. The compensation for which the applicant is entitled is as follows:

$$\text{Rs.1080/-} \times 189.56 \times 40/100 = \text{Rs.81,889.92 rounded to Rs.81,890/-}.$$

13. The learned Commissioner by following the procedure contemplated under the Act, allowed the application and arrived at a conclusion that the applicant is entitled to Rs.81,890/-. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the Opposite Party No.2 that the compensation awarded by the learned Commissioner is on higher side. Hence the present appeal is lack of merits and the same is liable to be dismissed.

14. In the result, the appeal is dismissed without costs. Consequently, cross-objections are also dismissed. Miscellaneous applications, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 19.08.2015
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