

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.2912 OF 2004

JUDGMENT:

1 This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, challenging the Order, dated 28.07.2003 passed in W.C.No.85 of 1999 on the file of the Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour, Nizamabad.

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

3 The facts that led to the filing of the present appeal, briefly, are as follows:

4 The applicant filed an application under Section 22 of the Workmen's Compensation Act claiming compensation of Rs.3.00 lakhs from the Opposite Parties for the injuries sustained by him in a road accident that occurred on 10.01.1998 out of and during the course of employment. It is the further case of the applicant that on the date of accident, he was engaged as driver on the bore well lorry bearing No.AP 25 A 3969, which belongs to the Opposite Party No.1 and insured with the Opposite Party No.2. It is further contended that the when the lorry reached Yedapalli village, the applicant lost control over the same due to which the lorry turned turtle after hitting against a bullock cart. The applicant sustained injuries and took treatment as inpatient in Government hospital, Nizamabad for a long time. The applicant was aged about 38 years and used to earn Rs.3,000/- p.m. as driver. Therefore, the Opposite Party Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.3.00 lakhs to the applicant.

5 Opposite Party No.1 remained *exparte*. Opposite Party No.2 filed counter denying all the averments made in the petition including the manner of accident, nature of injuries sustained by the applicant, *inter alia*, contending that there was no employer and employee relationship between the Opposite Party No.1 and the applicant. The applicant is not entitled to claim compensation unless he establishes that he was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the applicant is excessive and exorbitant. Hence the petition may be dismissed.

6 Basing on the above pleadings, the learned Commissioner framed two issues for trial.

7 During the course of enquiry, on behalf of the applicant A.Ws.1 and 2 were examined and Exs.A.1 to A.7 were marked. No oral or documentary evidence was adduced on behalf of the Opposite Party Nos.1 and 2.

8 On appreciating the oral, documentary evidence and other material available on record, the learned Commissioner arrived at a conclusion that on 14.06.2003 the applicant sustained injuries out of and in the course of employment under Opposite Party No.1 as on the date of accident and allowed the petition in part by awarding compensation of Rs.99,452/-. The applicant, not being satisfied with the quantum of compensation awarded by the learned Commissioner, has preferred the present appeal.

9 The contention of the learned counsel for the applicant is two fold. **1)** The learned Commissioner committed error while taking the wages of the applicant as Rs.2,000/- p.m. even though the applicant was earning Rs.3,000/- p.m. as lorry driver, and **2)** The learned Commissioner ought to have granted interest @12% p.a. from the date of accident till the date of realisation.

10 *Per contra*, the learned counsel for the Opposite Party No.2 Sri V. Venkatarami Reddy submitted that the finding of the lower Authority that by the date of accident, the applicant was working as an employee under Opposite Party No.1 is not supported by oral and documentary evidence. He further submitted that the learned Commissioner has rightly taken the monthly wages of the applicant as Rs.2,000/- basing on the notifications issued by the Government under Minimum Wages Act from time to time. He further submitted that the applicant is not entitled to interest from the date of accident.

11 Basing on the above rival contentions, the substantial questions of law that emerge for determination in this appeal are as follows:

- i) Whether there exists employer and employee relationship between the Opposite Party No.1 and the applicant as on the date of accident?
- ii) Whether the learned Commissioner committed error while not awarding interest @12% p.a. from the date of accident till the date of realisation.

Point No.1:

12 To substantiate the case, the applicant examined himself as P.W.1 and got marked Exs.A.1 to A.7. To prove the injuries sustained by him in the accident, the applicant examined P.W.2 – doctor. As seen from the testimony of P.W.1, he sustained injuries in a motor vehicle accident that occurred on 10.01.1998. As per the recitals of Ex.A.1 - FIR, Ex.A.2 - Remand Case Diary, Ex.A.4 - attested copy of charge sheet, by the time of accident, the applicant was working as driver on the lorry bearing No.AP 25 A 3969 which belongs to the Opposite Party No.1. A perusal of Ex.A.6 also clearly reveals that the applicant had valid driving licence to drive the lorry. In the cross-examination of P.W.1, nothing is elicited to shake his testimony so far as the employee and employer relationship between

him and the Opposite Party No.1 is concerned. The oral testimony of P.W.1 is fully supported by the recitals of Exs.A.1, A.2 and A.4 so far as the factum of employer and employee relationship between the Opposite Party No.1 and the applicant. The learned Commissioner has rightly considered the oral and documentary evidence available on record and arrived at a conclusion that there exists employer and employee relationship between the Opposite Party No.1 and the applicant. The finding recorded by the learned Commissioner with regard to the employer and employee relationship between the Opposite Party No.1 and the applicant became final in view of non-filing of appeal or cross objections by the Opposite Parties. The oral testimony of P.W.2 clearly reveals that the applicant sustained injuries on various parts of the body. As per the testimony of P.W.2, the applicant incurred 45% permanent partial disability. In the cross examination of P.W.2 nothing is elicited to disbelieve his testimony. The oral testimony of P.W.2 coupled with Ex.A.7 clearly reveals that the applicant incurred 45% disability. The disability incurred by the applicant undoubtedly affects his earning capacity. Taking into consideration the oral and documentary evidence available on record, the learned Commissioner assessed the loss of earning capacity of the applicant as 45%. As observed earlier, the Opposite Party No.2 has not filed any appeal or cross objections challenging the finding recorded by the learned Commissioner so far as the loss of earning capacity of the applicant is concerned. Having regard to the facts and circumstances of the case, I am of the considered view that the learned Commissioner has rightly assessed the loss of earning capacity of the applicant as 45%.

13 The predominant contention of the learned counsel for the applicant is that the learned Commissioner ought to have taken the

wages of the applicant as Rs.3,000/- p.m. The fact remains that the applicant is a driver by profession. The accident occurred on 10.01.1998. Except the self serving testimony of P.W.1, there is no other convincing evidence to prove that by the date of accident, the applicant was earning Rs.3,000/- p.m. If really Opposite Party No.1 paid an amount of Rs.3,000/- p.m. to the applicant, what prevented the applicant to examine the Opposite Party No.1 to prove this aspect. It is not uncommon to exaggerate the income of the injured in order to claim more compensation. In the absence of any documentary evidence, the learned Commissioner or this Court has to place reliance on the notifications or orders issued by the Government under Minimum Wages Act from time to time. The learned Commissioner has taken the wages of the applicant as Rs.2,000/- p.m. Viewed from any angle, I am unable to accede the contention of the learned counsel for the applicant that the learned Commissioner has committed error while fixing the wages of the applicant as Rs.2,000/- instead of Rs.3,000/-. The finding recorded by the learned Commissioner is fully supported by the oral and documentary evidence available on record so far as the monthly wages of the applicant are concerned. By the date of accident, the applicant was aged 38 years. Therefore, the appropriate factor to be applied is 184.71. Hence, the compensation to which the applicant entitled to is:

$$2000/- \times 60/100 \times 184.71 \times 45/100 = \text{Rs.}99,451\text{-}80 \text{ ps.}, \text{ which is} \\ \text{rounded off to Rs.}99,452/-$$

14 From the above, it is clear that the learned Commissioner has meticulously followed the procedure under the W.C. Act while assessing the compensation. There are no grounds much less valid grounds to interfere with the quantum of compensation awarded by the learned Commissioner. Accordingly, the point is answered.

Point No.2:

15 The contention of the learned counsel for the applicant is that the learned Commissioner ought to have awarded interest @12% p.a. from the date of filing of the petition till the date of realisation. It is a settled principle of law that the applicant is entitled to interest from the date when the amount fell due. Section 4 A of the W.C. Act enables the applicant/workman to claim interest from the date it fell due.

16 In the background of the same factual scenario, this Court, in *Vemula Venkata Rao @ Sreenu Vs. P.Sattar Khan* {CMA No.1088 of 2005 dated 17.07.2015}, by referring to the relevant provisions of the Act and by following various precedents of the Hon'ble Supreme Court as well as this Court in *Pratap Narain Singh Deo v Srinivas Sabata*^[1], *Oriental Insurance Co. Ltd v Siby George & Sons*^[2], *National Insurance Co. Ltd., v Mubasir Ahmed*^[3], *Oriental Insurance Co. Ltd., v Mohd. Nasir*^[4], *Oriental Insurance Co. Ltd., v Bashaboina Bakkamma*^[5], *Patalapati Venkatanarasayamma v. Susarla Subbalaxmi*^[6], *Maghar Singh v Jashwanth Singh*^[7] and *Midicharla Ramanamma v V.Naga Pratap*^[8] held that the applicant is entitled to interest @ 12% p.a. from the date of the accident till the date of realisation. Having regard to the facts and circumstances of the case and also the principle laid in the cases cited supra, the applicant is entitled to interest at 12% per annum.

17 In the result, the appeal is partly allowed, modifying the award passed by the learned Commissioner only to the extent of granting interest @ 12% p.a. from the date of accident on the amount of compensation of Rs.99,452/- as awarded by the learned

Commissioner. The award passed by the learned Commissioner, in all other aspects, shall remain undisturbed. The opposite party Nos.1 and 2 are jointly and severally liable to pay the compensation of Rs.99,452/- with interest at 12% per annum from the date of the accident till the date of deposit, after excluding 30 days. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this civil miscellaneous appeal shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 26th October, 2015

Kvsn

[\[1\]](#) (1976) 1 SCC 289

[\[2\]](#) (2012) 12 SCC 540

[\[3\]](#) (2007) 2 SCC 349

[\[4\]](#) (2009) 6 SCC 280

[\[5\]](#) 2011 (3) TAC 256

[\[6\]](#) 1986 ACJ 526 (A.P)

[\[7\]](#) 1998 (9) SCC 134

[\[8\]](#) 2003 (1) ALD 594