

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1759 of 2004

-

JUDGMENT:

This appeal is preferred against order dated 29.01.2002 in W.C.No.73 of 1999 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, whereunder, he granted Rs.1,09,397/- as compensation as against the claim of Rs.3,00,000/-. Not satisfied with the quantum, claimant preferred the present appeal.

Brief facts leading to this appeal are as follows:

2. Claimant-Appellant filed application before Assistant Commissioner of Labour, Nizamabad, contending that he is working as a labour on lorry bearing No.ADG 1539 belonging to 1st respondent herein on a salary of Rs.3,000/- per month and that on 19.10.1997 while he was under the employment of 1st respondent herein, while he was discharging his duties on the lorry, due to rash and negligent driving of the driver, the lorry turned turtle and resulted injuries to appellant and that he is entitled for compensation of Rs.3,00,000/-.

3. First respondent herein remained *ex parte* and Insurance Company opposed the application and disputed the claim of appellant.

4. The lower Authority examined two witnesses and marked five documents on behalf of claimant and no witness is examined and one document is marked on behalf of Insurance Company and on a overall consideration of oral and documentary evidence, the Assistant Commissioner of Labour, Nizamabad, granted Rs.1,09,397/- by taking monthly wages of appellant at Rs.1,800/- per month and age of appellant as 40 years and the disability at 55%.

Aggrieved by the quantum, claimant preferred the present appeal.

5. Heard arguments.

6. Advocate for appellant submitted the lower Authority committed error in taking the age as 40 years though the evidence on record including the medical evidence would show that appellant was only 30 years but not 40 years. He further submitted that the lower Authority also erred in taking the wage of appellant at Rs.1,800/- per month though he deposed that he was getting Rs.3,000/- per month as salary and for these two reasons, the order of the lower Authority has to be modified and the quantum of compensation has to be granted as prayed for.

7. Other side supported the order of the lower Authority.

8. Now the point that would arise for my consideration in this appeal is:

Whether the order dated 29.01.2002 in W.C.No.73 of 1999 of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, is legal, proper and correct?

-

POINT :

9. There is no dispute with regard to accident that took place on 19.10.1997, in which appellant received fracture of left hand, dislocation of left hip joint besides multiple and grievous head injuries and also other injuries on various parts of body. It is also not in dispute that appellant was working as a labourer on lorry bearing No.ADG 1539 belonging to 1st respondent herein. There is also no dispute that the vehicle is insured with 2nd respondent herein and policy is in force as on the date of accident as per Ex.B.1-policy. Now the only dispute is that the lower Authority wrongly took the age of appellant as 40 years though the evidence on record would show that he was only 30 years as on the date of accident. I have perused the evidence of PWs.1 and 2. PW.1 is appellant himself and he

deposed in his evidence that he was 30 years old as on the date of accident and even in his application also his age was mentioned as 30 years. The Medical Officer, who is examined as PW.2, deposed that on 10.06.2001, appellant came to him along with wound certificate and he assessed the disability on the basis of medical record at 55% and that appellant was 30 years old. As rightly pointed out by advocate for appellant when the evidence on record would show that appellant was only 30 years, taking the age of appellant as 40 years for the purpose of calculation is a mistake committed by the lower Authority and the same has to be rectified. The relevant factor for the age group of 40 years is 184.17 and the same is taken by the lower Authority while calculating the compensation whereas relevant factor for the age group of 30 years is 207.98. So, instead of taking multiplier 207.98, lower Authority took 184.17, which is incorrect.

10. The other objection of appellant is that appellant claimed salary of Rs.3,000/- per month, but the lower Authority has taken only Rs.1,800/- per month and the same is not correct. I have perused the evidence on record. No doubt, appellant contended that he was getting a salary of Rs.3,000/- per month, but there is no supporting evidence to show that he was getting Rs.3,000/- per month as on the date of accident. Admittedly, appellant was only a labourer on the lorry belonging to 1st respondent herein. Lower Authority considering this aspect and also the ceiling prescribed in the Workmen Compensation Act, fixed the salary at Rs.1,800/- per month. In my view taking into consideration profession of appellant in the year 1997, Rs.1,800/- per month for a coolie is a very reasonable amount and the contention of appellant with regard to salary cannot be accepted.

11. As already referred above, the lower Authority committed error in taking the age of appellant as 40 years, therefore, if the compensation is calculated by taking the age as 30 years with the same salary of Rs.1,800/- per month and the disability at 55%, it would come to Rs.1,23,540/- ($\text{Rs.1,800} \times \frac{60}{100} \times 207.98 \times \frac{55}{100}$). Therefore, appellant is entitled for this amount of Rs.1,23,540/- and

the Insurance Company shall deposit the difference amount within 30 days from the date of receipt of this order.

12. The other contention of appellant is that the lower Authority has not granted any interest on the compensation amount. I have perused the order of the lower Authority and as rightly pointed out no interest is awarded on the compensation. As per the decision of Supreme Court in **Saberabibi Yakubbhai Shaikh and others v. National Insurance Company Limited and others**, interest has to be granted from the date of accident till the date of deposit. So, considering the same, appellant is entitled for interest from the date of accident till the date of deposit. As the interest is not granted by the lower Authority, following the judgments of Supreme Court, appellant is granted interest at 12% per annum from the date of accident till the date of deposit.

13. Accordingly, the Civil Miscellaneous Appeal is partly allowed enhancing compensation amount from Rs.1,09,397/- to Rs.1,23,540/- and appellant is entitled for interest on Rs.1,23,540/- at 12% per annum from the date of accident till date of deposit. The Insurance Company shall deposit the said difference amount along with interest within 30 days from the date of this order. No costs.

14. Miscellaneous Petitions pending, if any, shall stand closed.

S. RAVI KUMAR, J

6th March 2015.

mar