

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

-
-
C.M.A.No.1212 of 2008

-
JUDGMENT:

This appeal under Section 30 of the Workmen's Compensation Act, 1923 presently known as Employees' Compensation Act, 1923 ('the Act' for short) by the unsuccessful applicant is directed against the order dated 13.12.2007 in W.C.No.58 of 2005 of the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Vijayawada.

2. I have heard the submissions of the learned counsel for the appellant/applicant ('the applicant', for brevity) and the learned counsel for the 2nd respondent/2nd opposite party ('the 2nd opposite party', for brevity).

None appeared for the 1st respondent/first opposite party ('the 1st opposite party', for brevity) though the said respondent was served with notice. I have perused the material record.

3. The facts that lead to the filing of this appeal by the applicant and the cases of the parties, in brief, are as follows:

3.1 The applicant was working as a cleaner on the lorry bearing registration no.AP 16 W 943 of the first opposite party, which is insured with the 2nd opposite party. On 01.04.2004 at about 12:15 P.M., when the applicant was discharging his duties as a cleaner on the said lorry while it was being driven by its driver while proceeding from Kudapa village to Hyderabad with a load of mangoes and on the way when the lorry had reached near Kuntamukkala village of Krishna District of Mylavaram Mandal road, the lorry capsized, due to the rash and negligent driving of the driver of the said lorry. In the said accident, the applicant had sustained injuries on his left fore arm besides other injuries all over his body. He was admitted in Andhra Pradesh Vaidya Vidhana Parishad Hospital, Mylavaram of Krishna

district for treatment. On a report lodged with the Station House Officer, G. Konduru Police Station, a case in Crime no.41 of 2004 was registered for the offences punishable under Sections 337 and 338 of the IPC. The happening of the said accident was intimated to the 1st opposite party. The applicant had spent Rs.30,000/- on medical and other expenses. Further he had lost earnings from the date of the accident till the date of filing of this application. He is not in a position to work and earn and he is being put to lot of mental agony which cannot be compensated in terms of money. The first opposite party used to pay Rs.2,500/- per month towards salary besides batta of Rs.50/- per day. The applicant's parents, wife and children are all depending upon his earnings and he was the sole bread winner of the family. He is not in a position to work and earn any income and maintain the family. He has no movable or immovable properties. As the injuries were sustained in an accident out of and during the course of his employment under the 1st opposite party, both the opposite parties are jointly and severally liable to pay a compensation of Rs.1,50,000/-.

3.2 The 1st opposite party had filed a counter denying the employment of the applicant under him, the alleged accident and the injuries said to have been sustained by the applicant in the alleged accident and the treatment said to have been received by the applicant and prayed for dismissal of the application.

3.3 The 2nd opposite party also filed a counter by raising various contentions. It is specifically urged in the counter of the second opposite party that there is no employer and employee relationship between the 1st opposite party and the applicant and that it does not admit that the applicant had sustained injuries much less grievous injuries in the alleged accident and that it is not aware of the crime, if any, registered by the police and that it does not admit that the vehicle involved in the accident is insured with it and that it is not liable to pay any compensation for the reason that the driver who drove the lorry at the relevant time has no valid and effective driving licence to drive the lorry and that its liability under the terms and conditions of the

policy is subject to the exceptions and limitations provided under law and that the application is filed in collusion with the 1st opposite party and that the applicant is not entitled to claim any compensation much less the compensation claimed.

3.4 Having regard to the above pleadings, the Tribunal framed the following issues for trial.

1. Whether the applicant Shaik China Nagoor is a workman under section 2(1)(n) of the Workmen's Compensation Act? And whether the accident has arisen out of and in the course of employment?
2. Whether the applicant sustained any permanent disablement?
3. What is the age, wage of the applicant workman and what is the percentage of loss of earning capacity?
4. What is the amount of compensation?
5. Who are liable to pay compensation to the applicant?

3.5 At trial, the applicant and a Doctor were examined as AWs1 and 2 and exhibits A1 to A10 were marked on his side. The Senior Assistant of the second opposite party was examined as BW1 and the copy of insurance policy of the subject vehicle is marked as exhibit B1.

3.6 On merits, the Tribunal had held that the applicant successfully proved that the accident in which he is involved had occurred out and during the course of his employment as cleaner on the lorry of the 1st opposite party. However, since the applicant had not sustained any permanent disability as a consequence of injuries sustained in the accident, the Tribunal had dismissed the application of the applicant without granting any compensation. Therefore, the applicant is before this Court.

4. The learned counsel for the applicant would contend as follows:

The learned Commissioner who had held that the applicant had sustained injuries out of and during the course of his employment on the lorry of the 1st opposite party, which is insured with the second opposite party, ought to have granted compensation as the applicant had pleaded and proved his case and as the evidence brought on record sufficiently established that he had suffered multiple injuries besides fracture injuries which lead to disablement which is permanent and partial in nature. The Tribunal ought to have seen that he had filed X-ray reports and medical bills. The Tribunal ought to have at least awarded medical expenses and compensation towards loss of earnings for the period he was out of work due to his hospitalisation and treatment. The Commissioner is not justified in rejecting the claim when the first issue is already answered in favour of the applicant.

5. Per contra, the learned counsel for the 2nd opposite party/insurance company while supporting the impugned order had forcefully contended as follows:

The applicant did not suffer any permanent disability of any kind (partial or permanent). It is not even his case in the pleadings that he had suffered any such permanent disability. There is no pleading and proof that the injuries allegedly sustained in the accident resulted in permanent and partial disability. When he had sustained only injuries and no disability, the provisions of the enactment are not attracted. Therefore, the applicant ought to have approached the Motor Accidents Claims Tribunal for award of compensation, instead of making a claim under the provisions of the WC Act. The medical bills are not proved as required under law. No substantial questions of law are involved in this appeal. The Commissioner having rightly found that the applicant had not sustained any permanent disability was justified in dismissing the application. There is no merit in the appeal. The appeal is liable to be dismissed.

6. Now the points for determination are:

Whether the applicant is entitled to claim any compensation in the facts and circumstances of the case? And, if so, to what amount and what is the liability of the opposite parties?

7. POINTS:

7.1 The facts leading to the filing of this appeal and the cases of the parties are already stated supra, in detail. I have carefully gone through the pleadings and the evidence brought on record. On careful examination of the evidence in juxtaposition with the pleadings, this Court is satisfied that there is sufficient evidence to safely conclude that the applicant who worked as a cleaner on the lorry of the 1st opposite party which is insured with the 2nd opposite party had sustained injuries out of and during the course of his employment under the 1st opposite party. Therefore, the finding of the learned Commissioner on issue no.1 does not call for any interference.

7.2 Now the question is as to what are the injuries that are sustained by the applicant and whether he had pleaded and proved that he had sustained any permanent disability (partial or permanent) as a consequence of the injuries sustained in the accident. On this aspect, the pleaded case of the applicant is this: - 'He had sustained injuries on his left fore arm besides other injuries all over his body. He was admitted in Andhra Pradesh Vaidya Vidhana Parishad Hospital, Mylavaram of Krishna district for treatment.' He deposed in line with his pleadings and had affirmed in his affidavit filed in lieu of examination in chief to the following effect: - 'He received injuries on his left fore arm and right tripaul region besides fracture injuries and other injuries all over his body and that he was admitted in Vaidya Vidhya Parishad hospital, Mylavaram of Krishna District for medical treatment and that later he was shifted to Rameeza Orthopaedic Centre for further treatment and surgery, and that in that hospital, he had undergone surgery and that he had spent more than Rs.30,000/- on hospital, medical and other expenses.' In his cross examination, he had maintained his stand that he was employed under the 1st opposite party and had denied the suggestions that he did not sustain any disability and that he had created the documents filed by him and deposing

falsehood for the purpose of claiming some compensation and that exhibit A10-X rays do not belong to him and that he is not entitled to any compensation. He had further examined AW2, who is a practising Orthopaedic Surgeon and is running a nursing home under the name and style of Rameeza Orthopaedic Centre, at Vijayawada for the last 14 years as on the date of his evidence. He had testified to the following effect: 'The applicant was admitted in my hospital on 02.04.2004 with following injuries - Fracture of both bones of left fore arm (grievous injury). He was operated upon on 03.04.2004. Open reduction and internal fixation and bone grafting was done. He was discharged on 13.04.2004.' In his cross examination he had stated that he is a senior orthopaedic consultant and surgeon with sufficient experience in the profession. He had admitted in his evidence that he did not state about any disability suffered by AW1 in his medical record and that exhibit A8 contains strikings and does not contain any clinical notes and that he did not bring any account books to the Court and that exhibit A2 is the wound certificate and that he had prescribed medicines. A perusal of exhibit A2 shows that the applicant had sustained fracture of left fore arm bones besides an abrasion on the right tripaul region and that X ray taken revealed fracture of lower 1/3rd of both bones of left fore arm and that the said injury is grievous in nature. Exhibit A9 on a perusal would show that it is a hospital bill issued by the hospital of AW2 to AW1 showing that Rs.16,000/- was received in all for the inpatient treatment undergone by AW1 from 02.04.2004 to 13.04.2004 for about 12 days.

7.2 On an analytical examination of the evidence brought on record, and considering the nature of the injuries sustained by AW1 and the treatment received by him, it can be said that there is some strength in the argument of the learned counsel that the applicant might have suffered some disability, but, the learned Commissioner had dismissed the application for lack of sufficient evidence in regard to the disability suffered by the applicant. Therefore, this Court finds that this is a fit case to allow the appeal and remit the matter to the learned Commissioner with a direction to give an opportunity to the applicant to produce a disability certificate from the District Medical

Board and prove the same, and give a fair opportunity to the second opposite party to adduce rebuttal evidence, if any, and then decide the case afresh on merits. The said course gives a quietus to the *lis* and sub-serves the ends of justice.

8. In the result and in view of the findings supra, the appeal is allowed and the order impugned is set aside and W.C.No.58 of 2005 is remitted to the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Vijayawada to decide the case afresh, as per the directions in the preceding paragraph. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

10th September, 2015
Vjl