

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.1087 OF 2005

JUDGMENT:

1 This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, challenging the Order, dated 01.09.2005 passed in W.C.No.18 of 2004 on the file of the Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour, Circle I, Guntur.

2 For the sake of convenience, the parties to this 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.2,75,000/- from the Opposite Parties for the injuries sustained by him in a road accident that occurred on 14.06.2003 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 cleaner on the lorry bearing No.AP 7 V 5076, which belongs to the Opposite Party No.1 and insured with the Opposite Party No.2. Therefore, the Opposite Party Nos.1 and 2 are jointly and severally liable to pay compensation 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 the driver of the lorry bearing No.AP 7 V 5076 was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by him is excessive and exorbitant. Hence the petition may be dismissed.

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

7 During the course of enquiry, on behalf of the applicant A.Ws.1 to 3 were examined and Exs.A.1 to A.8 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 was working as cleaner on the lorry bearing No.AP 7 V 5076, which belongs to the Opposite Party No.1 and allowed the petition in part by awarding compensation of Rs.1,12,912/-. 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 three fold. **1)** The learned Commissioner ought to have assessed the loss of earning capacity of the applicant as 100% instead of 40%. **2)** The learned Commissioner has not considered the testimony of A.W.2 in the light of Ex.A.3 wound certificate, and **3)** 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 submitted that the learned Commissioner has appreciated the oral and documentary evidence available on record in right perspective

and determined the loss of earning capacity of the applicant as 40% only. He further submitted that the learned Commissioner has assessed the loss of earning capacity of the applicant as 40% as the oral testimony of P.W.2 is contrary to the recitals of Ex.A.3 wound certificate. 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 the learned Commissioner erred while assessing the loss of earning capacity of the applicant as 40% instead of 100%?
- 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 The findings of the learned Commissioner that there exists employer and employee relationship between the Opposite Party No.1 and the applicant and that the applicant had sustained injuries out of and during the course of employment became final in view of non-filing of appeal or cross objections by the Opposite Party Nos.1 and 2. Hence I am not inclined to delve into this aspect elaborately in this appeal. I am fully agreeing with the findings recorded by the learned Commissioner that the applicant had sustained injuries in a road accident out of and during the course of employment.

13 As per the testimony of A.W.1, he sustained fractures, therefore, he could not attend the work. If the testimony of A.W.1 is taken into consideration, he is not in a position to attend the work which he used to attend prior to the accident.

14 As per the testimony of A.W.2, the applicant sustained fracture to left femur and underwent operation on 26.06.2003. His testimony

further reveals that the left leg of the applicant was shortened by 1 ½ inch. In the cross-examination A.W.2 in unequivocal terms deposed that the applicant can attend the light work.

15 Admittedly, the applicant has not approached the Medical Board and obtained disability certificate. Except the oral testimony of A.W.2, there is no other documentary evidence to prove that the applicant incurred 30% to 40% disability. As per the recitals of Ex.A.3 wound certificate, the applicant has not sustained fracture to left thigh. Absolutely there is no material available on record to establish that the applicant had sustained fracture to left thigh. As per the recitals of Ex.A.3 wound certificate, the applicant sustained fracture to left toe. As per the recitals of Ex.A.3, the applicant sustained crush injury to left thigh. Whatever deposed by A.W.2 is not supported by documentary evidence. In the absence of any documentary evidence, it is not possible for this Court to arrive at a conclusion that the applicant had sustained fracture to left femur. In such circumstances, it is not safe to place reliance on the testimony of A.W.2. The fact remains is that the applicant sustained fracture to left toe and crush injury to left thigh and fracture to skull. In such circumstances, the possibility of sustaining 30% to 40% disability is quite justifiable. It is a settled principle of law that functional disability cannot be equated with loss of earning capacity in each and every case. Loss of earning capacity of an injured workman has to be decided with regard to the nature of his avocation, age and other attending circumstances with reference to the percentage of functional disability incurred by him. The applicant can attend the duties of cleaner even with 30% to 40% functional disability, however, with some difficulty.

16 Basing on the material available on record, the learned

Commissioner has arrived at a conclusion that the loss of earning capacity of the applicant may be 40%. Absolutely, there is no material on record to show that the applicant was incapacitated to attend the work which he used to attend prior to the accident thereby to assess loss of earning capacity of the applicant as 100%. No doubt, functional disability of the applicant will certainly affect his earning capacity to the extent of 40% as assessed by the learned Commissioner. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the applicant that the order passed by the learned Commissioner is not sustainable. There are no grounds, much less, valid grounds to interfere with the order passed by the learned Commissioner on this aspect. I am fully agreeing with the findings recorded by the learned Commissioner so far as the loss of earning capacity of the applicant is concerned. The point is answered accordingly.

Point No.2:

17 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 mandates that the applicant is entitled to interest from the date it fell due.

17 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.

18 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.1,12,912/- 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.1,12,912/- with interest at 12% per annum from the date of the accident till the date of realization. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 21st September, 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