

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.766 OF 2005

JUDGMENT:

This appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 (the Act), challenging the order dated 31.5.2001 in W.C. Case No.66 of 2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Eluru, wherein and whereby an amount of Rs.4,66,022/- was awarded towards compensation to the applicant as against the claim of Rs.4,00,000/-.

2. For the sake of convenience, the parties to this appeal will be referred to as they are arrayed before the learned Commissioner.

3. The facts leading to filing of the present appeal are briefly as follows: The applicant filed the application under Section 22 of the Act claiming a compensation of Rs.4,00,000/- on the ground that he sustained injuries, in the accident that occurred on 15.11.2003, out of and in course of employment. Opposite party No.1 appointed the applicant as driver on lorry bearing No.APK 8267, which was validly insured with opposite party No.2. By the time of the accident, the applicant was aged about 29 years and used to earn Rs.5,500/- per month.

4. Opposite party No.1 remained *ex parte*. Opposite party No.2 filed counter denying all the averments made in the application including the manner of the accident, age and income of the applicant, *inter alia*, contending that there was no relationship of employer and employee between opposite party No.1 and the applicant. The amount of compensation claimed by the applicant is highly excessive and exorbitant.

5. Basing on the rival contentions, the learned Commissioner framed as many as three issues. During the course of enquiry, the applicant himself examined as A.W.1 and marked Exs.A1 to A7. On behalf of opposite parties, no oral evidence was adduced but Ex.B1 was marked on behalf of opposite party No.2.

6. On analysis of the evidence available on record, the learned Commissioner held that the applicant sustained injuries out of and in course of employment and allowed the application by awarding a compensation of Rs.4,66,022/- as against the claim of Rs.4,00,000/-. Feeling aggrieved by the order of the learned Commissioner, opposite party No.2 preferred the present appeal.

7. The contention of the learned counsel for opposite party No.2 is two fold:

- (1) the learned Commissioner committed error while assessing the loss of earning capacity of the applicant as 60% even though he incurred 40% functional disability as per Ex.A7 disability certificate;
- (2) non-examination of the Doctor is fatal to the case of the applicant; and
- (3) the learned Commissioner committed grave error while awarding more compensation than the amount claimed by the applicant.

8. The learned counsel for the applicant submitted that even in the absence of examination of the Doctor, learned Commissioner can assess the loss of earning capacity of the applicant basing on his avocation and percentage of functional disability incurred by him. He further submitted that there is no bar under the Workmen's Compensation Act to grant more compensation than the amount claimed by the applicant.

9. The substantial questions of law raised in this appeal are:

- (1) Whether the learned Commissioner has committed any error while assessing the loss of earning capacity of the applicant as 60% in the

absence of examination of the Doctor?

(2) Whether the learned Commissioner is justified in awarding more compensation than the amount claimed by the applicant?

Question No.1:

10. Opposite party No.2 has taken a specific plea, in its counter, that there is no employer-employee relationship between opposite party No.1 and the applicant. The oral testimony of P.W.1 coupled with recitals of Exs.A1 (First Information Report) and A4 (charge sheet) clearly establishes that by the time of the accident, the applicant was driving lorry bearing No.APK 8267, which belongs to opposite party No.1. If there was no employer-employee relationship between opposite party No.1 and the applicant, there was no necessity for the applicant to drive lorry bearing No.APK 8267 at the relevant point of time. All these facts clearly established employer-employee relationship between opposite party No.1 and the applicant. As per the recitals of Exs.A1 and A4, the applicant himself had driven the lorry bearing No.APK 8267 and dashed against a stationed lorry on 15.11.2003; in that process, he sustained injuries. The factum of sustaining of injuries by the applicant is supported by the recitals of Exs.A2 (wound certificate), A3 (outpatient chit) and A7 (disability certificate). Basing on the facts pleaded and proved, it can be safely concluded that the applicant sustained injuries out of and in course of the employment.

11. The testimony of A.W.1 reveals that he appeared before the Medical Board and obtained disability certificate (Ex.A7). It is a known fact that the Medical Board, which consists of three panel doctors, issues disability certificates after examining the injured person clinically and by following relevant guidelines. As per Ex.A7 disability certificate, the applicant sustained 40% functional disability. The fact remains that the applicant sustained fracture to both bones of left

thigh. It is needless to say that functional disability cannot be equated with loss of earning capacity in each and every case.

12. A perusal of Ex.A6 clearly reveals that the applicant had obtained driving licence to drive light motor vehicles and it was in force upto 21.1.2004. The applicant was having valid and effective driving licence as on the date of the accident. As rightly pointed out by the learned counsel for opposite party No.2, there is no evidence on record to establish that the applicant was incapacitated to drive motor vehicles in view of 40% functional disability sustained by him. It is a common knowledge that the driver's job is a skilled one. An individual with 40% functional disability to left thigh may not be in a position to drive motor vehicles. No lorry owner engages a person having 40% functional disability to drive his vehicle. The functional disability incurred by the applicant eventually affects his earning capacity in the future. By the time of the accident, the applicant was aged about 29 years; therefore, he has to suffer financially and physically during his remaining life. There is no chance for the applicant to get the job in any Government department. It appears that the learned Commissioner has taken into consideration the recitals of Ex.A7 disability certificate apart from the other aspects referred supra. The learned Commissioner, after taking into consideration the ground realities as well as percentage of functional disability incurred by the applicant, assessed his loss of future earning capacity as 60%. There are no grounds much less valid grounds to upset the finding of learned Commissioner so far as assessment of loss of earning capacity of the applicant is concerned. Merely because a qualified medical practitioner is not examined that itself is not a ground to discard disability certificate by ignoring the other material available on record in each and every case. While deciding the matters under the Workmen's Compensation Act, the lower authority shall not lose sight of the avocation of the applicant as well as the other attending

circumstances in order to render substantial justice to the claimants. Having regard to the facts and circumstances of the case, I am of the considered view that assessing the loss of earning capacity of the applicant as 60% is not only justifiable but also sustainable either on facts or in law. Hence, question No.1 is answered in favour of the applicant and against opposite party No.2.

Question No.2:

13. The other contention of learned counsel for opposite party No.2 is that the learned Commissioner committed error while awarding compensation of Rs.4,66,022/- even though he applicant claimed an amount of Rs.4,00,000/-. The very object of the Workmen's Compensation Act is to protect and safeguard the interest of workmen. It is the duty of the learned Commissioner to award just and reasonable amount of compensation. Simply because an innocent workman claimed less amount than the amount for which he is legally and legitimately entitled to, it would not mean that the learned Commissioner has to award compensation amount as claimed by the applicant.

14. As per the averment made in the applicant, by the time of the accident, the applicant was aged about 29 years and used to earn Rs.5,500/- per month. It appears, due to ignorance, the applicant claimed Rs.4,00,000/- only. Since the age of applicant is 29 years the learned Commissioner has taken the relevant factor 209.92. The learned Commissioner has assessed the wages of the applicant as Rs.3,700/- per month basing on G.O.Ms.No.30, dated 27.7.2000, and awarded just and reasonable compensation of Rs.4,66,022/- ($209.92 \times 3700 \times 60/100$).

15. The crucial question that falls for consideration is whether the learned Commissioner can award more compensation than the

amount claimed by the applicant/workman. To resolve the issue, this court is placing reliance on the decision of this court in **Oriental**

Insurance Company Limited v N.Sarojini^[1], wherein it was held as follows:

9. It is immaterial as to what an employee might claim. The commissioner has to grant compensation at the rate permissible under the law, in spite of a lesser claim. He has a duty to see that the injured get fair play. He has no jurisdiction to give less compensation than that laid down in the Act. The Commissioner is also not in any way fettered by what an ignorant injured workman might enter in his original application to him. An application filed under the Act, which is a social security measure, cannot be equated to a plaint before the Court. If in a given case, even though the claimant had asked for lesser amount, after proper adjudication when the Commissioner finds that higher compensation than what was asked for, has to be awarded, he has not only the power but also the duty to award such higher compensation. The claimant has a right to receive the compensation as per Section 4 notwithstanding that he claimed a lesser amount in the application. Claiming a particular amount by way of a compensation does not disentitle the workman to a higher compensation assessed by the Commissioner or, in appeal, by the High Court. A Commissioner under the Workmen's Compensation Act cannot grant lesser compensation than prescribed under the Act and the Schedule.

16. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the learned Commissioner has not committed any illegality or irregularity while awarding more amount of compensation than claimed by the applicant. There are no grounds much less valid grounds to interfere with the well considered findings of the learned Commissioner. Accordingly, the question No.2 is answered in favour of the applicant and against opposite party No.2.

17. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 14.9.2015.

YS

[\[1\]](#) 2010 ACJ 2277 : 2009 (5) ALD 300 : 2009 (5) ALT 698