

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.4768 of 2004

JUDGMENT:

This appeal is preferred against orders dated 25.03.2004 in W.C.No.189 of 2003 on the file of Commissioner for Women's Compensation & Assistant Commissioner of Labour, Nizamabad.

2. Brief facts leading to this appeal are as follows:

First respondent herein submitted application under Section 22 of the Workmen's Compensation Act to the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Nizamabad contending that he was working as labourer on lorry bearing No.AHT 9828 belonging to the second respondent herein on a monthly salary of Rs.5,000/- and that on 18.04.2002 while he was travelling in the lorry, during the course of his employment, he sustained injuries due to the accident caused by driver of the lorry and that he is entitled for compensation of Rs.4,00,000/-.

3. Insurance Company opposed the application. The lower authority conducted enquiry, during which, two witnesses are examined and 6 documents are marked on behalf of claimants and one witness is examined and no documents are marked on behalf of Insurance Company. On a over all consideration of oral and documentary evidence, the lower authority granted Rs.78,616/- as compensation and aggrieved by the same, insurance company preferred present appeal.

4. In spite of service of notice, all the respondents neither appeared in person nor through any advocate.

5. Heard argument of advocate for appellant.

6. Advocate for appellant submitted that the lower authority failed to see that the disability certificate is not issued by the medical board and PW.2 has deposed in his private capacity though he is a Government doctor and therefore the certificate issued by the private doctor ought not to have taken into consideration. He further submitted that the lower authority failed to follow the guidelines in accepting the evidence of private doctors, therefore, order of the lower authority has to be set aside.

7. Now the point that would arise for my consideration is:

Whether the order of the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Nizamabad is legal, proper and correct?

POINT:

8. As seen from the record, the injured/1st respondent was working as labourer on a lorry belonging to 2nd respondent herein and according to his contentions, he was drawing salary of Rs.4,000/- per month. It is evident from the record that 1st respondent herein sustained injuries while on duty on the lorry at about 11.30 am on 18.04.2002. Injured/1st respondent is examined as PW.1, who deposed in his evidence supporting his claim and also the manner in which he received injuries. Medical officer is examined as PW.2 and he deposed that on 15.04.2003 he examined the claimant and found mal-united fracture of both bones of right leg and that claimant sustained disability. He deposed on physical and clinical examination, he assessed the disability at 30%, which is partial and permanent and loss of earning capacity at 35%. He also deposed that the injuries mentioned in Ex.A3 are corresponding to the injuries mentioned in Ex.A4 and with that

disability, the claimant cannot do work, which he was doing previously. He deposed that he issued Ex.A4 disability certificate.

9. Now the objection of insurance company is that PW.2 is only a private doctor and the disability assessed by him cannot be taken into consideration. As seen from the material, PW.2 is an Orthopedic Surgeon working in a Government hospital and also doing private practice, and in his capacity as a private practitioner, he examined injured and assessed the disability. Though this PW.2 was cross-examined on behalf of insurance company, no specific motive is attributed to PW.2, except putting suggestion that the percentage of disability is high and excessive. Simply because, PW.2 is a private doctor, the loss of earning capacity or loss of disability assessed by him cannot be thrown out because he is an Orthopedic Surgeon working in a Government hospital and no specific motive is attributed for issuing such certificate to the claimant. It is not the case of appellant that PW.2 is related to claimant nor that he had any personal interest towards injured/PW.1, therefore, in the absence of any such material attributing motive, the contentions of insurance company with regard to the evidence of PW.2 and the certificate issued by him cannot be accepted. As seen from the record, the very same injuries noted by PW.2 are also recorded in Ex.A3-injury certificate.

10. On a scrutiny of the material, objection of insurance company with regard to assessment made by PW.2 cannot be accepted. The point is accordingly answered against appellant.

11. For these reasons, it is held that appeal is devoid of merits and liable to be dismissed.

12. Accordingly, the Civil Miscellaneous Appeal is

dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 08-04-2015.
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