

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.634 of 2005

JUDGMENT:

This appeal is filed challenging the award dated 18.9.2003 in W.C. Case No.46 of 2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-I, wherein and whereby the compensation amount of Rs.92,977/- was awarded as against the claim of Rs.2,00,000/- claimed by the applicant.

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

3. The facts leading to filing of the present appeal are briefly as follows: The opposite party No.1 engaged the services of the applicant as driver on the Tractor bearing No.AP 28B 5791. As per the directions of opposite party No.1, on 12.4.1997 at about 6.00 AM, the applicant was proceeding from Vikarabad to Dharur by driving the Tractor. When the Tractor reached Kerelli village, Ranga Reddy District, due to bad condition of the road, the applicant lost control over the Tractor and thereby the Tractor turned turtle. In the said accident, the applicant sustained grievous injuries on various parts of the body and took treatment as inpatient in Osmania General Hospital, Hyderabad for a period of five months. The Station House Officer, Dharur Police Station, Ranga Reddy District registered a case in Crime No.20 of 1997 under Section 338 IPC against the applicant. Due to the injuries sustained in the accident, the applicant's right leg was shortened and thereby he incurred 40% functional disability. By the time of the accident, the applicant was aged about 38 years and earning Rs.4,000/- per month as Tractor driver. The Tractor bearing No.AP 28B 5791,

which belongs to opposite party No.1, was insured with opposite party No.2, with effect from 27.6.1996 to 26.6.1997. Hence, the application claiming compensation of Rs.2,00,000/- from opposite party Nos.1 and 2 jointly and severally.

4. The opposite party No.1 filed counter admitting the material averments made in the application.

5. The 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. The applicant is not entitled to claim compensation unless he establishes the relationship of employee and employer between him and opposite party No.1. The percentage of disability alleged to have been incurred by the applicant is on higher side. The amount of compensation claimed by the applicant is highly excessive and exorbitant.

6. Basing on the rival contentions, the Commissioner framed the following issues:

(1) Whether the applicant received personal injuries in an accident on 12.4.1997 that arose out of and during the course of his employment under OP 1 as tractor driver and partially permanently disable?

(2) If so, what is his percentage of loss of earning capacity?

(3) To what quantum of compensation the applicants are (*sic*, applicant is) entitled for? And who is liable to pay?

6. During the course of enquiry, on behalf of the applicant A.Ws.1 and 2 were examined and Exs.A1 to A8 were marked. Opposite party No.1 himself was examined as O.P.W.1 on his behalf but no document was marked. On behalf of opposite party No.2, no oral evidence was adduced but Ex.B1 insurance policy was marked.

7. On appraising the oral, documentary evidence and other material available on record, the Commissioner allowed the petition in part by

awarding an amount of Rs.92,977/- towards compensation directing opposite party Nos.1 and 2 to deposit the same by way of demand draft drawn in favour of the Commissioner for Workmen's Compensation & Commissioner of Labour, Hyderabad (TCs) within 30 days and if they fail to deposit the awarded amount, within 30 days from the date of receipt of the order, they have to pay an interest @ 9% p.a. in addition to 50% penalty that may be imposed under Section 4A(3) of the Act.

8. Feeling aggrieved by the order of the learned Commissioner opposite party No.2 preferred the present appeal.

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

i. A.W.2 (Medical Practitioner) is not competent person to speak about the percentage of disability incurred by the applicant;

ii. The learned Commissioner has not considered the recitals of Ex.A4 disability certificate and the testimony of the doctor (A.W.2), in right perspective, and allowed the petition on assumptions and presumptions;

iii. The findings recorded by the learned Commissioner are not sustainable either on facts or on law.

Per contra, learned counsel for the applicant submitted that the applicant incurred 40% disability due to shortening of his right leg. He further submitted that the applicant is not in a position to drive the tractor and that aspect was not considered by the learned Commissioner in right perspective. He also submitted that there are no grounds much less valid grounds to interfere with the finding of the learned Commissioner imposing liability on opposite party No.2.

10. In view of the submissions made by the learned counsel for the parties, the following two questions arise for consideration in this appeal:

1. Whether the Commissioner lacks inherent jurisdiction to

entertain the application as there was no jural relationship of employer and employee between opposite party No.1 and the applicant at the time of the alleged incident?

2. Whether the accident occurred out of and during the course of employment of the applicant?
3. Whether A.W.2 is competent to issue disability certificate—Ex.A4?

Point Nos.1 and 2:

11. Both these points are interlinked with each other; hence, I am inclined to address these two points simultaneously in order to avoid recapitulation of facts and evidence.

12. The case of the applicant is that opposite No.1 engaged him as driver on Tractor bearing No.AP 28B 5791. The opposite party No.1 filed counter admitting the relationship of employer and employee between him and the applicant. Opposite party No.2 has taken a specific plea, in the counter, that there is no relationship of employer and employee between opposite party No.1 and the applicant. Mere taking up a plea, in the counter, by itself would not amount to proof of the stand taken by opposite party No.2. In the chief-examination, the applicant (A.W.1) categorically deposed that by the time of the accident, he was working as driver on the Tractor of opposite party No.1. As per the testimony of O.P.W.1 (opposite party No.1), by the time of the accident, the applicant was working as driver on the Tractor belongs to him. In the cross-examination of the applicant (A.W.1) and opposite party No.1 (O.P.W.1), nothing was elicited to shake their testimony so far as jural relationship of employer and employee between opposite party No.1 and the applicant is concerned.

13. A perusal of Ex.A1 (certified copy of F.I.R.) reveals that the Station House Officer, Dharur Police Station registered a case in Crime No.20 of 1997 against the applicant for the offence under Section 337 IPC. The concerned Station House Officer investigated into the matter and laid charge sheet (certified copy of which was

marked as Ex.A2) against the applicant for the offence punishable under Section 338 IPC. The oral testimony of A.W.1 and O.P.W.1 is fully supported by the recitals of Exs.A1 and A2. It is not the case of opposite party No.2 that the applicant and opposite party No.1, in connivance with the Police, brought into existence Exs.A1 and A2. If really no accident occurred as pleaded by the applicant and opposite party No.1, there is no necessity for the Police to register Crime No.20 of 1997 against the applicant and investigated into the same. The recitals of Exs.A1 and A2 falsify the contention of opposite party No.2 with regard to relation of employer and employee between opposite party No.1 and the applicant is concerned.

14. A perusal of Exs.A3, A5, A7, A8 and A9 clearly reveals that the applicant took treatment as inpatient in Osmania General Hospital, Hyderabad immediately after the accident. The recitals of Exs.A1 to A9 clearly demonstrate that the applicant sustained injuries out of and in the course of employment.

15. The learned Commissioner, after considering the oral and documentary evidence available on record, arrived at a conclusion that the applicant sustained injuries out of and during the course of employment. The finding recorded by the learned Commissioner is supported by oral and documentary evidence available on record. I am fully endorsing the findings recorded by the learned Commissioner so far as the above referred aspects are concerned. There are no grounds much less valid grounds to upset the findings recorded by the learned Commissioner. Accordingly, these points are answered.

Point No.3:

16. The predominant contention of the learned counsel for opposite party No.2 is that A.W.2 (Medical Practitioner) is not competent to issue Ex.A4–disability certificate. Under Section 4(1)(c) of the Workmen's Compensation Act, Qualified Medical Practitioner is competent to issue disability certificate. To resolve the issue, this court

is placing reliance on **N.Sree Ramulu @ Sree Rama Murthy v B.**

Lakshmi Narayana^[1] wherein this Court held at para No.26 as follows:

26. The following principles can be culled out from the above decisions of the Supreme Court and this Court:

(a) All injuries or permanent disabilities arising from injuries do not result in loss of earning capacity.

(b) Where permanent partial disablement results from an injury and the said injury is specified in Schedule I, it would be covered by Section 4(1)(c)(i) of the Act. In such a case, the workman would be entitled to such percentage of compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury;

(c) Where permanent partial disablement results from an injury and the injury is not specified in Schedule I, it would be covered by Section 4(1)(c)(ii) of the Act. In such a case, the workman would be entitled to such percentage of compensation which would have been payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

(d) In assessing loss of earning capacity in a case of permanent partial disablement resulting from an injury not specified in the Schedule I, the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I.

(e) The opinion of the medical practitioner as to the percentage of loss of earning capacity would be normally binding on the court where permanent partial disablement results from an injury not specified in Schedule I.

Let me consider the facts of the case on hand in the light of the above principles. The case of the applicant is that the Medical Practitioner is competent to issue disability certificate. It is not the case of opposite party No.2 that A.W.2 is not a Qualified Medical Practitioner. As per the oral testimony of A.W.2, the applicant sustained fracture to both bones of right leg. In the cross-examination also, A.W.2 categorically deposed that right leg of the applicant was shortened. A perusal of Ex.A3 discharge summary reveals that the applicant was admitted in Osmania General Hospital, Hyderabad on 28.5.1997 and discharged on 11.6.1997. Ex.A3 further reveals that for the fracture sustained to both bones of right leg, the applicant underwent operation on 03.6.1997. The oral testimony of A.W.2 coupled with Exs.A3 and A4 clinchingly establish that the applicant incurred 40% permanent partial disability due to shortening of his right leg. In the cross-examination of A.W.2, nothing was elicited to shake his testimony so far as his

qualification is concerned. The possibility of incurring 40% functional disability by the applicant due to shortening of right leg cannot be ruled out completely.

17. The Workmen's Compensation Act is a piece of social beneficial legislation. The court has to interpret the provisions of the Act in such a manner so as to achieve the object with which the Act was enacted. Merely because there is a delay in obtaining the disability certificate, by itself is not a valid ground to discard the case of the applicant in toto. As observed earlier, the recitals of Ex.A3 clinchingly establish that the applicant sustained fracture to both bones of the right leg. Having regard to the facts and circumstances of the case and also the principles enunciated in the case cited supra, I am unable to accede to the contention of learned counsel for opposite party No.2 that the learned Commissioner has committed grave error while placing reliance on the evidence of A.W.2 and Ex.A4 disability certificate. Accordingly, the point is answered holding that A.W.2 is competent to issue Ex.A4 disability certificate.

18. By examining A.W.2 and marking Exs.A3, A4, A5, A7 and A9, the applicant clinchingly established that he incurred 40% functional disability. It is needless to say that functional disability cannot be equated with loss of earnings in each and every case. Admittedly, the applicant sustained non-scheduled injury. If the workman sustains non-scheduled injuries, the court has to take utmost care while assessing the loss of earning capacity of the workman. It is not the case of the applicant that due to 40% functional disability he is not in a position to attend any work which he used to attend prior to the accident. The applicant may face some difficulty to drive the motor vehicle with 40% functional disability. Undoubtedly, the functional disability incurred by the applicant will affect his earning capacity. By taking into consideration all these aspects, learned Commissioner assessed the loss of earning capacity of the applicant at 50%.

19. Except the self-served testimony of the applicant, there is no other convincing evidence to establish that by the time of the accident, he was earning Rs.4,000/- per month as driver. In the absence of convincing evidence, there is no other option to the learned Commissioner except to fall back on the Orders or Notifications issued by the Government from time to time under the Minimum Wages Act. The learned Commissioner assessed the wages of the applicant basing on G.O.Ms.No.71, W.D.C.W. Lab-II Department, dated 16.4.1991. As per the said G.O., basic wage of a driver is Rs.880/- per month and the Variable Dearness Allowance is Rs.712.50 ps. Thus, the salary of the applicant is (Rs.880 + Rs.712.50) Rs.1,592.50 per month. Taking into consideration the age of the applicant as 37 years, the learned Commissioner has rightly applied the factor 192.14. The compensation for which the applicant is entitled is as follows:

$$\text{Rs.1,592.50} \times 60/100 \times 192.14 \times 50 = \text{Rs.91,795/-}$$

Besides that, the learned Commissioner rightly awarded Rs.182/- towards stamps and Rs.1,000/- towards Advocate fee. Therefore, the compensation amount for which the applicant is entitled to is Rs.92,977/-. The compensation awarded by the learned Commissioner is just and reasonable. The learned Commissioner has determined the compensation by following the procedure contemplated under the Act. There are no grounds much less valid grounds to interfere with the well considered findings recorded by the learned Commissioner.

20. 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: 31.8.2015
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