

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.596 OF 2005

JUDGMENT:

This appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 (the Act), challenging the order dated 28.1.2003 in W.C. Case No.13 of 2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Karimnagar, wherein and whereby an amount of Rs.30,396/- was awarded towards compensation to the applicant as against the claim of Rs.66,228/-.

2. For the sake of convenience, the parties to this appeal will hereinafter 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 is a plant mechanic of Karimnagar-Adilabad Milk Producers Co-operative Union Limited (opposite party No.2). In April, 2001 he was deputed to work in Jagtial Milk Chilling Centre (opposite party No.1). On 19.8.2002, at about 12.00 hours, while the applicant was setting right the V-Belt of the compressor, in order to rectify mechanical defect; in that process, his right hand middle finger was crushed. Immediately after the incident, the applicant was taken to a nearby hospital and after first aid he was shifted to Area Hospital, Jagtial wherein he underwent treatment as inpatient and his right hand middle finger was amputated up to one inch. The applicant was on medical leave from 21.8.2002 to 26.9.2002. By the time of the incident, the applicant was aged 47 years and drawing a monthly salary of Rs.9,034/-. Due to amputation of right hand middle finger up to one inch, the applicant suffered a lot. Hence, the application claiming compensation of Rs.66,228/-.

4. Opposite party Nos.1 and 3 did not choose to file counter. Opposite party No.2 filed counter denying the manner of sustaining of injury by the applicant. It is contended that before making the claim application, the applicant did not comply with the statutory provisions of Act and as such the application is not maintainable under law. Even after sustaining of the injury, the applicant has been continuing in the service with the same salary. The applicant has sustained injury due to his own negligence. Hence, the application may be dismissed.

5. Basing on the rival contentions, the learned Commissioner framed the following issue:

Whether the applicant is entitled to any compensation payable by the opposite parties in respect of his employment injuries sustained on 19.8.2002?

6. During the course of enquiry, on behalf of the applicant, the applicant himself was examined as P.W.1 and got marked Exs.A1 to A6. On behalf of opposite party No.2, R.W.1 was examined but no document was marked.

7. On appraising the oral, documentary evidence and other material available on record, the learned Commissioner arrived at the conclusion that the applicant is entitled for compensation under the provisions of the Act and allowed the application in part by awarding an amount of Rs.30,396/- towards compensation. Feeling aggrieved by the orders of the learned Commissioner, opposite party Nos.1 and 2 preferred the present appeal.

8. In spite of service of notice, the first respondent–applicant did not choose to appear and oppose the appeal. Hence, I am inclined to dispose of the appeal on merits in the absence of the applicant. The contention of the learned counsel for the appellants–opposite party Nos.1 and 2 is three fold:

(1) the learned Commissioner failed to appreciate that the

applicant sustained injury due to his own negligence;

(2) the applicant has no right whatsoever to attend repairing work without the prior consent of opposite party No.1, which aspect was not considered by the learned Commissioner;

(3) the learned Commissioner failed to consider that in spite of amputation of right hand middle finger up to one inch, there is no loss of earnings to the applicant.

9. Now the point that arises for consideration in this appeal is as follows:

Whether the learned Commissioner has committed any error while allowing the application?

Point:

10. The oral testimony of P.W.1 and R.W.1 clearly reveals that by the time of unfortunate incident, the applicant was working as plant mechanic in the opposite party No.2–Union. At the relevant point of time, the applicant was deputed to work in opposite party No.1 Jagtial Milk Chilling Centre, Karimnagar District. The oral testimony of P.W.1 and R.W.1 coupled with Exs.A2 (disability certificate), A4 (copy of notice), A5 (X-ray) and A6 (prescription of Om Sai Hospital, Jagtial) clearly reveals that the applicant's right hand middle finger up to first phalanx was amputated. A perusal of Ex.A3 (copy of letter addressed to opposite party No.2) reveals that opposite party No.1 sanctioned special disability leave to the applicant.

11. The crucial question that falls for consideration is whether the applicant sustained injury due to his own negligence or not. I have carefully scanned the cross-examination of P.W.1. It is not positively elicited, in the cross-examination of P.W.1, that he sustained crush injury due to his own negligence. He denied the suggestion that he did not incur partial permanent disability. It is also not elicited, in the cross-examination of P.W.1, that at the time of unfortunate incident, he was not deputed to attend repairing work of V-Belt of compressor. The

testimony of P.W.1 clearly reveals that at the time of the accident, he was attending the repairing work of V-Belt. Basing on the facts pleaded and proved, this court can safely arrive at the conclusion that the applicant sustained crush injury out and in course of employment. Learned counsel for the appellants has drawn my attention to Sub-clause (ii) to Proviso (b) of Section 3(1) of the Act, which reads as follows:

“the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed for the purpose of securing the safety of workman,”

A perusal of the above sub-clause demonstrates that a workman is not entitled to claim compensation under the Act if he violates any standing order or rule framed by the employer. Absolutely there is no material on record to establish that the applicant was not permitted to work within the premises. It is a common knowledge that the duty of a plant mechanic is to attend the repairing work of the plant and machinery. The contention of the learned counsel for opposite party Nos.1 and 2 that the applicant was not authorised to attend the repairing work on that day cannot be accepted. It is not specifically pleaded in the counter of opposite party No.2 that on the date of the incident, the applicant was not authorised to attend repairing work. In the absence of any such pleading or evidence, it is not possible for this court to arrive at a conclusion that the applicant has violated any standing order or rule made by the Union.

12. Section 2(1)(g) of the Workmen's Compensation Act defines partial disablement. As per Serial No.29 of Part-II to Schedule-I of the Act, loss of earning capacity in case of amputation of one phalanx is 9%. The material available on record clinchingly establishes that the applicant sustained partial disability. Admittedly, by the time of the unfortunate incident, the applicant was drawing a salary of Rs.9,034/- per month and aged about 47 years for which the factor applicable is

163.07. Taking into consideration these aspects, the learned Commissioner has awarded just and reasonable compensation. There is no much dispute with regard to quantum of compensation. I am fully agreeing with the findings recorded by the learned Commissioner. The appeal lacks merits and *bona fides*. Accordingly, the point is answered.

13. 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: 10.9.2015.

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