

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
C.M.A.No.1081 of 2005

JUDGMENT:

1 This appeal is filed under Section 30 of Workmen's Compensation Act, 1923 challenging the award dated 12.09.2005 passed in W.C.No.25 of 2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I Circle, Guntur whereunder the Commissioner awarded compensation of Rs.46,118/- as against the claim of Rs.2,25,000/- 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 lower authority.

3 The facts, which are relevant, for disposal of the present appeal are as follows:

4 The applicant worked as a cleaner on the lorry bearing No.ABG 8555, which belongs to the Opposite Party No.1. On 31.03.2004 the applicant was proceeding on the said lorry from Kakumanu to Kakinada. When the lorry reached Takkellapadu cross roads, the driver of the lorry drove the same in a rash and negligent manner due to which the accident occurred. The Station House Officer Pedakakani Police Station registered a case in Cr.No.71 of 2004 against the driver of the lorry. Due to the accident, the applicant sustained injuries on various parts of the body and took treatment in different hospitals. By the time of accident, the applicant was aged about 18 years and used to earn Rs.2,000/- p.m by working as cleaner on the said lorry. The applicant also incurred permanent disability, due to which he was

unable to attend the work of cleaner, thereby lost his earning capacity. As on the date of accident, the lorry bearing No.ABG 8555, which belongs to the Opposite Party No.1 was insured with the Opposite Party No.2. Hence the applicant filed the claim petition seeking compensation of Rs.2,25,000/- from the Opposite Party Nos.1 and 2 jointly and severally.

5 Opposite Party No.1 filed counter admitting the averments made in the petition. It is further contended that the lorry bearing No.ABG 8555 was insured with the Opposite Party No.2 as on the date of accident. Therefore, the Opposite Party No.2 alone has to pay the compensation if any to the applicant.

6 Opposite Party No.2 opposed the claim by way of filing counter denying all the material averments made in the claim petition. It is further contended that the insurance policy does not cover the risk of cleaner. Hence the petition may be dismissed.

7 Basing on the rival contentions, the Commissioner framed three issues. During the course of enquiry, on behalf of the applicant A.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the Opposite Parties no oral or documentary evidence was adduced.

8 Basing on the material available on record, the Commissioner allowed the petition in part by awarding an amount of Rs.46,118/- as compensation payable to the applicant by way of demand draft drawn in favour of the Commissioner for Workmen's Compensation & Deputy Commissioner of Labour, Guntur within 30 days from the date of receipt of the order.

9 As stated supra, not being satisfied with the amount of

compensation awarded, the applicant filed the present appeal.

10 The contention of the learned counsel for the applicant is two fold:

- i. The learned Commissioner has not considered the oral testimony of A.W.2 and the recitals of Ex.A.3 in right perspective.
- ii. The learned Commissioner failed to consider that the disability incurred by the applicant incapacitated him to attend the work which he used to attend prior to the date of accident and hence the loss of earning capacity shall be assessed as 100% instead of 15%.

11 *Per contra*, the learned counsel for the Opposite Party No.2 submitted that the finding recorded by the learned Commissioner that the applicant incurred 15% disability is not supported by any documentary evidence. He further submitted that for the reasons best known to him, the applicant did not choose to file the disability certificate before the learned Commissioner.

12 In view of the submissions made by the learned counsel for the parties, the question that arises for consideration in this appeal is:

“Whether the Commissioner committed error in assessing the loss of earning capacity of the applicant as 15% instead of 100%?”

13 The following admitted facts can be culled out from facts pleaded and proved. The applicant was working as cleaner on the lorry bearing No.ABG 8555 as on 31.3.2004. The oral testimony of A.W.1 coupled with Exs.A.1, A.2, A.2 and A.5 clearly reveals that the applicant had sustained injuries in the accident that occurred on 31.3.2004. The fact remains that as on the date of accident, the applicant was working as cleaner on the lorry

bearing No.ABG 8555, which belongs to the Opposite Party No.1. So, there is an employee and employer relationship between the applicant and the Opposite Party No.1. Basing on the material available on record, the Court can safely arrive at a conclusion that the applicant sustained injuries during the course of the employment.

14 The next question that falls for consideration is whether permanent disability sustained by the applicant prevented him to discharge the duties of cleaner or not?

15 The oral testimony of A.W.2 coupled with Ex.A.3 reveals that the petitioner sustained fracture to left thigh bone and 4th and 5th toes. As per the testimony of A.W.2, the applicant sustained 15% disability due to hip knee restriction. There is no whisper in the testimony of A.W.2 that the applicant is not in a position to discharge the duties of cleaner in view of the 15% disability sustained by him. Even if the testimony of A.W.2 is taken into consideration, the applicant sustained 15% disability to femur only. Absolutely, there is no material on record to establish that the applicant has not been discharging the duties as lorry cleaner after the date of accident i.e. 3.10.2004. It is needless to say that functional disability cannot be equated to loss of earning capacity in each and every case. The Tribunal or the Court as to take into consideration the avocation of the injured person while determining the loss of earning capacity. It is not uncommon to exaggerate the percentage of disability sustained by the applicant in order to claim more compensation. If really the applicant has not been discharging duties of cleaner, what prevented him to approach the medical board and obtain

disability certificate. For the reasons best known to him, the applicant did not choose to file the disability certificate issued by a medical board or any other competent medical practitioner. Even in the absence of disability certificate, the learned Commissioner, on humanitarian grounds, has determined the loss of earning capacity of the applicant at 15%.

16 Absolutely, there is no material on record to enhance the amount of compensation awarded by the learned Commissioner. I see no grounds much less valid grounds to interfere with the amount of compensation awarded by the learned Commissioner. The appeal is devoid of any merit and hence the same is liable to be dismissed.

17 The appeal is, accordingly, dismissed. Consequently, miscellaneous petitions, if any, pending in this miscellaneous appeal shall stand closed. No order as to costs.

T. SUNIL CHOWDARY, J

Date: 20.07.2015
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