

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.842 OF 2005

JUDGMENT:

This appeal is filed under Section 30 of the Workmen's Compensation Act, challenging the order dated 25.10.2004 in W.C. Case No.8 of 2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I Circle, Guntur, wherein and whereby an amount of Rs.2,09,047/- was awarded towards compensation to the applicants as against the claim of Rs.5,00,000/-.

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: One Katikala Lakshmaiah @ Laxmanarao was engaged as driver on the lorry bearing No.AP 16X 1417 belongs to opposite party No.1. On 15.10.2002 Lakshmaiah was proceeding to Madras from Vizag while driving the lorry loaded with angulars. When he reached Somavarappadu village, he lost control over the lorry and dashed against a trailer bearing No.AP 16V 6782. The accident occurred due to rash and negligent driving of lorry bearing No.AP 16X 1417 by Katikala Lakshmaiah, against whom the Station House Officer, Denduluru Police Station, West Godavari District registered a case in Crime No.116 of 2002 under Section 338 IPC. In the accident, Lakshmaiah sustained fractures to both legs. Due to the injuries, right leg of Lakshmaiah was amputated below the knee. The lorry bearing No.AP 16X 1417, which belongs to opposite party No.1, was insured with opposite party No.2 as on the date of the accident. Hence, the application claiming a compensation of Rs.5,00,000/- from opposite party Nos.1 and 2. During the pendency of W.C. Case No.8 of 2003, Lakshmaiah died and applicant Nos.2 and 3 were brought on record as his legal representatives.

4. Opposite party No.1 remained exparte. Opposite party No.2 filed counter denying all the averments made in the application, *inter alia*, contending that Lakshmaiah was not having valid and effective driving licence as on the date of the accident. The

compensation claimed by the applicant is on higher side. Opposite party No.2 also filed additional counter contending that the applicants have to prove that original applicant died due to the injuries sustained in the accident. Hence, the application may be dismissed.

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

(1) Whether the deceased was a workman as per the provisions of the Act and he received personal injuries in an accident arising out of and in the course of his employment and died due to the injuries?

(2) Amount of compensation payable? and

(3) Who are liable to pay the compensation?

6. During the course of enquiry, on behalf of the applicants A.Ws.1 to 4 were examined and Exs.A1 to A5 and X1 were marked. On behalf of opposite party Nos.1 and 2, no oral evidence was adduced.

7. On appraising the oral, documentary evidence and other material available on record, the learned Commissioner arrived at the conclusion that the first applicant sustained injuries out of and in the course of employment, and allowed the petition in part by awarding compensation amount of Rs.2,09,047/- directing opposite party Nos.1 and 2 to deposit the same. Being not satisfied with the quantum of compensation awarded by the learned Commissioner, the applicants preferred the present appeal.

8. The contention of the learned counsel for the applicants is two fold:

(1) the learned Commissioner failed to appreciate that the functional disability cannot be equated with loss of earning capacity;

(2) the learned Commissioner failed to appreciate that Lakshmaiah was not in a position to attend the work to which he used to attend prior to the accident; therefore, the loss of earnings is 100% and not 55% as determined by the learned Commissioner;

(3) the learned Commissioner committed error while not granting interest at the rate of 12% per annum from the date of petition till realisation? and

(4) the findings recorded by the learned Commissioner are not based on sound reasoning.

Per contra, learned counsel for the opposite party No.2 submitted that the learned Commissioner rightly determined the loss of earning capacity of Lakshmaiah as 55% basing on the evidence of A.W.2. He further submitted that there are no grounds much less valid grounds to interfere with the well considered order of the learned Commissioner.

9. Now the points that arise for consideration in this appeal are as follows:

- (1) Whether the learned Commissioner has committed any error while assessing the loss of earning capacity of the deceased as 55%?
- (2) Whether the learned Commissioner committed error by not awarding interest on the compensation awarded from the date of the accident?

Point No.1:

10. The finding of the learned Commissioner that Lakshmaiah sustained injuries out of and in course of employment has become final in view of non-filing of appeal or cross-objections by opposite party Nos.1 and 2. The said finding is supported by evidence much less legally admissible evidence. Hence, I am fully endorsing the finding recorded by the learned Commissioner on that aspect.

11. As per the testimony of A.W.1, her husband sustained injuries in the accident. Her testimony further reveals that her husband's right leg was amputated below the knee and he also sustained fracture to left leg. As per the testimony of A.W.2 (Dr.K.Rajababu), Lakshmaiah sustained functional disability of 55%. The oral testimony of A.Ws.1 and 2 coupled with Ex.X1 case sheet maintained by Government General Hospital, Guntur clearly reveals that Lakshmaiah sustained 55% functional disability. It is an admitted fact that Lakshmaiah was a driver of heavy goods vehicle. It is a common knowledge that no one engages a person, whose right leg was amputated below the knee, to drive any vehicle much less heavy goods vehicle. The material available on record clinchingly establishes that Lakshmaiah was incapacitated to attend the work which he used to attend prior to the accident. By any stretch of imagination, it cannot be presumed that Lakshmaiah can discharge duties of driver on any type of motor vehicles. For better appreciation of the rival contentions, it is apposite to extract hereunder Section 2(l) of the Act.

2(1)(l). “total disablement” means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement:

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity as specified in the said Part II against those injuries, amounts to one hundred per cent or more.

12. A perusal of the above section, at a glance, clearly demonstrates that while assessing the total disablement of the workman, the Court has to taken into consideration the description of injury as specified in Part I and Part II of Schedule I of the Act. Section 3 of the Act deals with the liability of the employer to pay compensation. Section 4 of the Act contemplates quantification of compensation. The Parliament in its wisdom incorporated Section 2(1)(l) of the Act with a laudable object to protect the interest of workman who sustained disability of such nature which falls outside the purview of Part I and Part II of Schedule I of the Act. Undoubtedly, Lakshmaiah was incapacitated for performing the duties of driver, which he used to perform prior to the accident. In such circumstances, whether the court has to assess the loss of earning capacity of the applicant as 100% or 55%. At this stage, learned counsel for the applicants has drawn my attention to **N.Sree Ramulu v B.Lakshmi Narayana (died) and others**, wherein it is held as follows:

33. CMA No.335 of 2002:

The claimant/appellant was working as a lorry cleaner on the lorry of the 1st respondent and he received injuries on 11.06.2000 when he was covering the load on the lorry with a tarpaulin and fell down from the lorry on account of rain and sustained injuries to his right leg, left shoulder and multiple injuries all over his body. AW.2, the medical practitioner who treated him stated that the claimant suffered injuries of dislocation of left shoulder and left body of his scapula, 1, 2, 3 metatarsals of right foot and fracture of ulna styloid right side of wrist apart from facial nerve palsy. He assessed the disability of the claimant at 45% and stated that he cannot work as lorry cleaner; he cannot walk properly as there is malunion in the foot on account of metatarsal fracture; he cannot hold objects with right hand because of stiffness of wrist; and cannot chew properly because of facial nerve palsy. The Commissioner assessed the loss of earning capacity at 45% and awarded compensation on the said basis.

As the injuries suffered by the claimant in the accident are such that he can no longer work as a lorry cleaner, walk properly or walk long distances, cannot hold objects with right hand because of stiffness of wrist and also cannot chew properly because of facial nerve palsy, it would be difficult for him to secure any employment. Therefore, the loss of earning capacity ought to have been taken as 100% by the Commissioner. Therefore, the

order dt.15.12.2001 in W.C. No.22 of 2000 of the Commissioner for Workmen's Compensation and Asst. Commissioner for Labour-I, Guntur, is set aside. Compensation shall be assessed and paid to the appellant on the basis that his loss of earning capacity is 100%. The appeal is accordingly allowed. No costs.

In New India Assurance Compaly Ltd., v A.Narsimhulu, it was held as under:

Section 2(1)(l) of the Act defines 'total disablement' - means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement. Therefore even if a workman suffers physical disablement to a lesser extent, say 25%, 40%, 50% etc., if such physical disablement itself totally incapacitates the workman from doing any work which he was capable of performing before accident, it can be treated total disablement. In this case Ex.A-4 - disability certificate shows that physical disability suffered by workman is 45% but Doctor -A.W.2 stated that right leg of the workman was shortened which means that workman can never be driver and therefore, he suffered total disablement. In such situation amount assessed by Commissioner remained unassailable.

The facts of the case on hand are almost identical to the facts of the cases cited supra.

13. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that due to the amputation of right leg below the knee, Lakshmaiah was totally incapacitated to attend the duty as a driver of the lorry, which he was attending by the time of the accident. The learned Commissioner assessed the earning capacity of Lakshmaiah as 55% basing on functional disability incurred by him. As observed earlier, functional disability cannot be equated with loss of earnings in each and every case. The loss of earning capacity has to be decided keeping in mind the functional disability as well as other attending circumstances. In the instant case, loss of earning capacity can be taken as 100%. The finding of learned Commissioner that loss of earning capacity of Lakshmaiah as 55% is not sustainable either on facts or in law.

14. By the time of the accident, Lakshmaiah was aged about 40 years. The relevant factor to be applied is 184.17. Learned Commissioner assessed the wages of Lakshmaiah as Rs.3,427/- basing on G.O.Ms. No.30, dated 27.7.2000. Thus, the

loss of future earnings of Lakshmaiah comes to:

$$\text{Rs.}3,427 \times 60/100 \times 184.17 = \text{Rs.}3,78,690.356 \text{ ps.}$$

Besides the above, the applicants are entitled to Rs.417/- towards stamp duty and Rs.350/- towards paper publication charges. Total compensation comes to Rs.3,79,457.35, which is rounded off to Rs.3,79,458/-. Hence, point No.1 is answered in favour of the applicants and against opposite party No.2.

Point No.2:

15. The other contention of the learned counsel for the applicants is that the learned Commissioner has not awarded interest from the date of the accident. The learned counsel for the opposite party No.2 submitted that the claimants are entitled for interest only from the date when the compensation falls due and not from the date of the accident. He further submitted that opposite party No.2 has deposited the amount of Rs.2,09,047/- as awarded by the learned Commissioner in the year 2004 itself; therefore, the applicants are not entitled for the interest on that amount.

16. In the background of the same factual scenario, this Court, in *Vemula Venkata Rao @ Sreenu Vs. P.Sattar Khan* {CMA No.1088 of 2005 dated 17.07.2015}, by referring to the relevant provisions of the Act and by following various precedents of the Hon'ble Supreme Court as well as this Court in ***Pratap Narain Singh Deo v Srinivas Sabata, Oriental Insurance Co. Ltd v Siby George & Sons, National Insurance Co. Ltd., v Mubasir Ahmed, Oriental Insurance Co. Ltd., v Mohd. Nasir, Oriental Insurance Co. Ltd., v Bashaboina Bakkamma, Patalapati Venkatanarasayamma v Susarla Subbalaxmi, Maghar Singh v Jashwanth Singh and Midicharla Ramanamma v V.Naga Pratap*** held that the applicant is entitled to interest @ 12% p.a. from the date of the accident till the date of realisation.

17. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited above, I am of the considered view that the applicants are entitled to interest at 12% per annum on the enhanced compensation from the date of the accident till the date of realization. Accordingly, this point is answered.

18. In the result, the appeal is partly allowed, enhancing the compensation from Rs.2,09,047/- to Rs.3,79,458/-. The opposite party Nos.1 and 2 are jointly and severally liable to pay the compensation with interest at 12% per annum from the date of the accident i.e., 15.10.2002 till the date of realization. There shall be no order as to costs. Miscellaneous

petitions, if any, pending in this appeal shall stand closed.

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T.SUNIL CHOWDARY, J.

Date: 08.9.2015.

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