

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.1106 of 2005

JUDGMENT:

This civil miscellaneous appeal is filed under Section 30 of the Workmen's Compensation Act, challenging the order dated 01.09.2005, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1 Circle, Guntur, (for short, the Commissioner) in W.C. Case No.57 of 2003, wherein and whereby an amount of Rs.83,708/- was awarded as against the claim of Rs.4,00,000/-.

2. The parties will be hereinafter referred to as they are arrayed before the Commissioner in W.C. Case, for the sake of convenience.

3. The facts leading to filing of the present appeal are briefly as follows: On 27.07.2002 the applicant was proceeding towards Kavali from Ongole while driving the lorry bearing No.AP 12T/4469, which belongs to opposite party No.1. When the lorry reached to Rudrakota village, the applicant had driven the same in a rash and negligent manner and dashed against the lorry bearing No.AP-4T-4557, thereby the applicant received grievous injuries. The Station House Officer, Kavali registered a case in Crime No.102 of 2002 against the applicant. The applicant took treatment as inpatient for long time and thereby lost his income. The applicant suffered with permanent disability due to fractures sustained by him. By the time of accident, the applicant was aged about 25 years and used to earn Rs.4,600/- per month. The lorry bearing No.AP-12T-4469, which belongs to opposite party No.1 was insured with the opposite party No.2 with effect from 30.07.2001 to 30.08.2002 vide policy No.620800/31/01/02153. Hence, the applicant filed application claiming compensation of Rs.4,00,000/-.

4. No counter was filed by the first respondent. The 2nd respondent filed counter denying all the averments made in the application including the manner of accident, age and income of the applicant as on the date of alleged accident. The amount of compensation claimed by the applicant is on higher side. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Commissioner framed the following issues:

- (1) Whether the applicant 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?
- (2) Amount of compensation payable? and
- (3) Who are liable to pay the compensation?

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. On behalf of the second respondent, no oral evidence was adduced but Ex.B1 was marked.

7. On appreciation of oral, documentary evidence and other material available on record, the learned Commissioner arrived at a conclusion that the applicant sustained injuries during the course of employment and allowed application in part by granting compensation amount of Rs.83,708/-. Feeling aggrieved by the order of the learned Commissioner, the applicant preferred the present appeal.

8. The contention of the learned counsel for the appellant-applicant is two fold:

- (1) the learned Commissioner failed to see that the applicant is not in a position to drive the heavy vehicles, therefore, the loss of earnings shall be treated as 100% instead of 20%; and
- (2) the learned Commissioner has not granted interest as per the provisions of the Workmen Compensation Act.

Per contra, learned counsel for the second respondent-opposite party

No.2 submitted that the learned Commissioner has rightly considered the oral and documentary evidence, therefore there are no grounds to interfere with the order of the learned Commissioner.

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

Whether the learned Commissioner has committed any irregularity while computing the loss of earnings of the applicant?

10. **POINT:**

It is an admitted fact that by the time of accident, the applicant was working as driver on the lorry bearing No.AP-12T-4469, which belongs to opposite party No.1. As per the recitals of Ex.A7 insurance policy, the lorry bearing No.AP 12T 4469, which belongs to the opposite party No.1 was insured with the opposite party No.2 with effect from 30.07.2001 to 30.08.2002. Ex.A7 insurance policy was in force as on the date of accident. The second respondent is also not disputing the relationship of employee and employer between the applicant and the opposite party No.1. The oral testimony of A.Ws.1 and 2 coupled with Exs.A1, A2, A3, A4, A5 and A6 clearly reveals that the applicant herein sustained injuries in the accident that occurred on 27.07.2002. Basing on the oral and documentary evidence available on record, this Court can safely arrived at a conclusion that the applicant herein sustained injuries during the course of employment.

11. As per the testimony of A.W.2, the applicant incurred 15 to 20 percent disability. As per the wound certificate, the petitioner sustained two injuries. It is needless to say that the percentage of disability cannot be equated with the loss of earning in each and every case. The Tribunal or Commissioner or the Court has to assess the loss of earning capacity of injured person basing on his avocation, age and other attending circumstances. Even assuming but not admitting that the petitioner sustained 15% to 20% functional disability, the same may not incapacitated the applicant to earn anything. Basing on the

oral testimony of A.W.2 and Ex.B1 would certificate, the learned Commissioner arrived at a conclusion that the applicant incurred 20% disability. The learned Commissioner arrived at a conclusion that the loss of earnings of the applicant can be taken as 20% only. Even as per the testimony of A.W.2, the applicant may face some difficulty to drive the vehicles. Viewed from any angle, I am unable to accept the contention of the learned counsel for the applicant the loss of earning can be taken as 100% instead of 20%.

12. Basing on the material available on record, I am of the considered view that the loss of earning capacity of the applicant can be taken as 20% only. I am fully agreeing with the findings recorded by the learned Commissioner. There are no grounds much less valid grounds to interfere with the orders of the learned Commissioner so far as the loss of earning capacity of the applicant is concerned.

13. The learned counsel for the applicant submitted that the Commissioner ought to have granted interest to the applicant. In all fairness, learned counsel for the second respondent submitted that the learned Commissioner has not awarded interest in this case. As per Subsection (3) of Section 4(A) of Workmen Compensation Act, the applicants are entitled for interest as a statutory right on the compensation amount fell due. This Court also placing reliance on ***ORIENTAL INSURANCE COMPANY LTD. V. SIBY GEORGE AND OTHERS***^[1]. As per the principle enunciated in the case cited supra, the claimant is entitled for interest from the date the compensation fell due. Having regard to the facts and circumstances of the case, I am inclined to award interest on the awarded amount at 12% per annum. Accordingly, the point is answered.

14. In the result, the appeal is allowed in part directing the second respondent to pay interest at 12% per annum on the award amount of Rs.83,708/- from the date of accident till the date of deposit. There

shall be no order as to costs. Miscellaneous applications, if any,
pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date:15.7.2015
Rns

[\[1\]](#) (2012) 12 SCC 540