

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
C.M.A.No.585 of 2005

JUDGMENT:

1 This appeal is filed under Section 30 of Workmen's Compensation Act, 1923 challenging the award dated 27.01.2005 passed in W.C.No.50 of 2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I Hyderabad whereunder and whereby the Commissioner awarded compensation of Rs.1,81,959/- as against the claim of Rs.4.00 lakhs 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 On 09.04.2004 the applicant was engaged as labourer on the tipper bearing No.AIV 1379, which belongs to the Opposite Party No.1 for loading and unloading of stones. When the applicant was about to open the back door of the tipper, the driver suddenly started the tipper, because of which the stones loaded in the tipper fell on his legs and stomach. The petitioner took treatment as inpatient in Gandhi hospital, Secunderabad for the injuries sustained by him in the said accident. In connection with the said accident, the Station House Officer, Jeedimetla Police Station registered a case in Cr.No.169 of 2004 against the driver of the tipper for the offence punishable under Section 337 IPC. By the time of accident, the applicant was aged about 25 years and used to earn Rs.3,000/- p.m apart from batta of Rs.50/- per day. As on the date of accident, the tipper bearing No.AIV 1379, 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.4.00 lakhs 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 tipper bearing No.AIV 1379 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 filing counter denying all the material averments made in the claim petition including the manner of accident, age and income of the applicant.

There is no employer and employee relationship between the applicant and the Opposite Party No.1. Hence the petition may be dismissed.

7 Basing on the rival contentions, the Commissioner framed the following issues.

- i. Whether the applicant received personal injuries in an accident on 09.04.2004 that arose out of and during the course of his employment under O.P.1 as cleaner-cum-labour on tipper lorry bearing No.AIV 1379 and became partially and permanently disabled and lost some percentage of his earning capacity?
- ii. If so, what is the percentage of his loss of earning capacity?
- iii. To what quantum of compensation the applicant is entitled for? and who is liable to pay?

8 During the course of enquiry, on behalf of the applicant A.Ws.1 and 2 were examined and Exs.A.1 to A.15 were marked. On behalf of the Opposite Parties, Opposite Party No.1 got himself examined as O.P.W.1 and got marked Exs.B.1 to B.3. On behalf of the Opposite Party No.2, copy of the insurance policy was marked

as Ex.C.1.

9 Basing on the material available on record, the Commissioner allowed the petition in part by awarding an amount of Rs.1,81,959/- as compensation payable to the applicant by way of demand draft drawn in favour of the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour - I, Hyderabad within 30 days from the date of receipt of the order.

10 As stated supra, not being satisfied with the amount of compensation awarded, the applicant filed the present appeal.

11 The learned counsel for the applicant submitted that the learned Commissioner erred in assessing the loss of earning capacity of the applicant as 60% instead of 100%. He further submitted that the learned Commissioner ought to have granted interest at 12% p.a. from the date of filing of the petition till the date of deposit.

12 *Per contra*, the learned counsel for the Opposite Party No.2 submitted that learned Commissioner has rightly assessed the loss of earning capacity of the applicant at 60% while awarding the compensation. He further submitted that the applicant is entitled to interest from the date of adjudication and not from the date of accident and hence the learned Commissioner has rightly awarded interest from the date of award. He further submitted that there are no grounds much less valid grounds to interfere with the award passed by the learned Commissioner.

13 As per the testimony of A.W.1, on the date of accident, he was engaged as labourer on the tipper bearing No.AIV 1379 for loading and unloading of stones. The testimony of A.W.1 clearly

reveals that he sustained injuries out of and during the course of employment.

14 As per the testimony of A.W.2, the applicant sustained two fractures to his right and left leg. As per the testimony of A.W.2, the applicant sustained 60% disability. In the cross – examination, A.W.2 has given different version with regard to the nature of disability sustained by the applicant. There is no mention in the disability certificate that the disability sustained by the applicant leads to 100% loss of earning capacity. The fact remains that the applicant sustained non-scheduled injuries. By the time of accident, the applicant was engaged as cooli for loading and unloading of stones on the tipper which belongs to the Opposite Party No.1. It is a settled principle of law that the percentage of functional disability cannot be equated with loss of earning capacity in each and every case. There is no whisper in the testimony of A.W.2 that the applicant is not fit to attend any work much less the work which he used to attend prior to the accident. In such circumstances, the loss of earning capacity of the applicant cannot be treated as 100%, as contended by the learned counsel for the applicant. No doubt, a person who is attending labour work requires much stamina and physical strength. With two fractures, it may not be possible for the applicant to attend the labour work regularly. The applicant can attend the labour work, however, with some difficulty. The material available on record clearly reveals that the applicant sustained 60% functional disability. The learned Commissioner, while considering the nature of injuries sustained by the applicant, arrived at a conclusion that the injuries sustained by the applicant may affect his earning capacity to the extent of 60%. Taking into consideration the plight of the applicant, the

learned Commissioner has rightly determined the loss of earning capacity of the applicant at 60%. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the applicant that the findings of the learned Commissioner are not sustainable.

15 Except the self serving testimony of A.W.1, there is no other documentary evidence available on record to establish that by the time of accident, the applicant was earning Rs.4,500/- p.m. The learned Commissioner has determined the wages of the applicant at Rs.2312.75 ps. By following the procedure contemplated under the W.C. Act, the learned Commissioner has determined the loss of future earnings of the applicant at Rs.1,81,959/-, which in my considered view, is just and reasonable and it does not warrant interference of this Court.

16 The other contention of the learned counsel for the applicant is that the learned Commissioner ought to have awarded interest @ 12% p.a. from the date of accident.

17 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***^[1], ***Oriental Insurance Co. Ltd v Siby George & Sons***^[2], ***National Insurance Co. Ltd., v Mubasir Ahmed***^[3], ***Oriental Insurance Co. Ltd., v Mohd. Nasir***^[4], ***Oriental Insurance Co. Ltd., v Bashaboina Bakkamma***^[5], ***Patalapati Venkatanarasayamma v Susarla Subbalaxmi***^[6], ***Maghar Singh v***

Jashwanth Singh^[7] and Midicharla Ramanamma v V.Naga

Pratap^[8] held that the applicant is entitled to interest @ 12% p.a. from the date of the accident till the date of realisation. Having regard to the facts and circumstances of the case and also the principle laid in the cases cited supra, the applicant is entitled to interest at 12% per annum.

18 In the result, the appeal is partly allowed, modifying the award passed by the learned Commissioner only to the extent of granting interest @ 12% p.a. instead of 9% p.a. from the date of accident on the amount of compensation of Rs.1,81,959/- as awarded by the learned Commissioner. The award passed by the learned Commissioner, in all other aspects, shall remain undisturbed. The opposite party Nos.1 and 2 are jointly and severally liable to pay the compensation of Rs.1,81,959/- with interest at 12% per annum from the date of the accident till the date of realization. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 26th August, 2015

Kvsn

^[1] (1976) 1 SCC 289

^[2] (2012) 12 SCC 540

^[3] (2007) 2 SCC 349

^[4] (2009) 6 SCC 280

^[5] 2011 (3) TAC 256

^[6] 1986 ACJ 526 (A.P)

^[7] 1998 (9) SCC 134

^[8] 2003 (1) ALD 594