

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.913 of 2004

JUDGMENT :

This appeal is preferred challenging order dated 27.01.2004 in W.C.No.93 of 2003 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad.

2. First respondent herein submitted an application to Commissioner for Workmen's Compensation contending that he was driver on DCM Van bearing No.AP 28 U 421 and that on 06.02.2003 while he was proceeding from Bollaram towards Uppal and when he reached ARM Company, Bandlaguda Village, at about 11.00 a.m. an unknown tipper came in opposite direction, in a rash and negligent manner and on seeing that vehicle, 1st respondent took his vehicle towards extreme left to avoid accident and in that process his vehicle turned turtle and he sustained injuries. He contended that he was shifted to NIMs Hospital, Hyderabad, where he was admitted and treated. He further contended that he received fracture of both bones upper 1/3rd of his right leg with posterior destruction of right knee and that his leg was amputated on 06.02.2003 and he was discharged on 20.02.2003. First respondent claimed a sum of Rs.5,00,000/- as compensation and the Commissioner for Workmen's

Compensation on a consideration of evidence granted Rs.4,42,658/- by taking loss of earning capacity as 100%. Aggrieved by the compensation awarded by the Commissioner for Workmen's Compensation, Insurance Company preferred the present appeal.

3. Heard arguments.

4. Advocate for appellant submitted that Commissioner for Workmen's Compensation is not right in granting compensation to

1st respondent without considering the objection of the Insurance company with regard to the non-joinder of necessary parties i.e., driver, owner and insurance company of opposite vehicle. He further submitted that lower Authority is not right in taking loss of earning capacity at 100% without any medical evidence and that there is no evidence on record to show that there is employee and employer relationship between 1st and 2nd respondents herein. He submitted that the order of lower Authority granting compensation by taking loss of earning capacity as 100% is not sustainable.

5. On the other hand, learned counsel for 1st respondent herein submitted that the injured was a driver and on account of amputation of his leg, he cannot discharge his duties as driver and taking the same into consideration, lower Authority assessed the loss of earning capacity at 100% and that there are no grounds to

interfere with the compensation awarded by the lower Authority.

6. Now the point that would arise for my consideration in this appeal is:

Whether there are any grounds to interfere with the compensation awarded by Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad, in W.C.No.93 of 2003?

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POINT :

7. As seen from the record, 1st respondent herein was a workman working under 2nd respondent as driver on DCM Van bearing No.AP 28 U 421. The injured is examined as AW.1 and in his evidence he deposed as to the manner in which he sustained injury, also about the treatment he took in NIMs Hospital, Hyderabad. He got marked attested copy of F.I.R. as Ex.A.1, attested copy of complaint given by him to police as Ex.A.2, attested copy of panchanama as Ex.A.3, attested copy of case diary and enquiry and final report as EXs.A.4 and A.5. He also got marked the medical records as Exs.A.6 to A.8. Out of these documents Ex.A.8 is the disability certificate, which shows that 1st respondent was injured and his leg was amputated in NIMs Hospital, Hyderabad. One of the contentions of appellant is that lower Authority is not justified in taking the disability at 100% without any evidence, but that contention cannot be accepted

because in the cross-examination nothing could be elicited from 1st respondent with regard to the correctness of the medical records which are marked as Exs.A.6 to A.8. The next objection of appellant is that when Insurance Company raised objection with regard to non impleading the other tipper, the lower Authority ought to have rejected the claim for non-joinder of necessary parties. This objection is also not tenable because as seen from the record the opposite vehicle is an unknown vehicle and police could not trace out the vehicle and final report is already submitted to that effect. When 1st respondent is employee on the vehicle met with the accident and as there is valid policy as on the date of accident covering the risk, the objection of Insurance Company cannot be sustained. Further it is not a head on collusion and to avert the accident, 1st respondent turned his vehicle to left side and as he was unable to control, the vehicle turned turtle and in that process he sustained injuries. Therefore, there is no involvement of opposite vehicle and the objection with regard to non-joinder of driver, owner and insurance company of the other vehicle i.e., tipper is not at all tenable. On a scrutiny of the entire material, I am of the view that lower Authority has rightly calculated the compensation by taking loss of earning capacity at 100% and that there are no grounds to interfere with the said order.

8. For these reasons, the appeal is dismissed. No costs.

9. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

28th January 2016

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