

HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A. No. 1155 of 2008

JUDGMENT:

This appeal is filed against order dated 14.10.2005 in W.C.No. 4 of 2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Tirupathi.

2. First respondent herein submitted an application to Commissioner for Workmen Compensation alleging that he met with an accident on 29.11.2002 while on duty as Driver on a Tractor and Tractor bearing No. AP03 V 3360 & 3361 belonging to second respondent herein. He further submitted that claimant was earning Rs. 2,000/- per month as salary and Rs. 50/- per day as batta and he incurred Rs. 25,000/- towards medical expenses and that he is entitled for compensation of Rs. 2,00,000/-. Second respondent herein filed counter admitting that claimant is a driver on his tractor and tractor and that he has been paying Rs. 2,000/- per month and batta of Rs. 50/- per day and his driver met with an accident while he was on duty. Appellant- Insurance Company herein, objected the claim mainly on the ground that the claimant is not entitled for compensation and all the injuries are curable in nature. They also contended that the claim of the employee is excessive and exorbitant. They further

contended that the claimant has to strictly prove the injuries sustained by him, his age, his wages and his employment with the second respondent herein. With these contentions, lower authority conducted enquiry. On a consideration of material on record, lower authority granted Rs. 1,22,445/- besides stamp duty of Rs. 245/- with interest at 12% per annum from the date of accident till the date of actual payment. Aggrieved by the award of the Commissioner for Workmen's Compensation, Insurance Company filed the present appeal.

3. Heard both sides.

4. Advocate for appellant submitted that the order of the lower authority is bad mainly on three grounds. He submitted that without examining the doctor and without any material the Commissioner for Workmen's Compensation has taken loss of earning capacity at 30% in calculating compensation and the same is not legal. He further submitted that though the claimant himself stated that he is drawing salary of Rs. 2,000/- per month, the lower authority had taken minimum wages at Rs. 3337/- and calculated the compensation and the same is not permissible as per the decision of this Court in ***New India Assurance Co.Ltd., Gudivada v. Mandava Krishna Kumari and others***^[1]. He further submitted that the claim was made with delay of two years but the lower authority granted interest for this period also though the claimant is not entitled for interest to that period. He

submitted two decisions of the Supreme Court in support of his arguments reported in **Mahamooda and others vs. United India Insurance Co. Ltd and others**^[2] and the other decision reported in **P.J. Narayan v. Union of India and others**^[3].

5. On the other hand, advocate for claimant submitted that the trial Court rightly took the loss of earning capacity at 30% relying on the disability certificate, which is marked as Ex. A4. She submitted that as per decision of the Supreme Court in **Raj Kumar v. Ajay Kumar and another**^[4], where the wound certificate is not disputed, the same can be accepted. It is further submitted that the claimant contended that he is drawing a sum of Rs. 2,000/- per month as wages and Rs. 50/- per day as batta, and total comes to Rs. 3,500/- per month but Commissioner for Workmen's Compensation had taken only Rs. 3,337/- by applying the minimum wages and in the decision relied on by the Insurance Company total amount claimed by the claimant therein was Rs. 2,500/- including batta, therefore, that decision is not applicable to the case on hand. It is further submitted that the claimant is entitled for interest for the entire period except the period of delay of two years. Therefore, the award can be modified by reducing the interest part for the delayed period of two years.

6. Now the point that would arise for my consideration

in this appeal is:

Whether the order dated 14.10.2005 in W.C.No. 4/04 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Tirupathi, is legal, proper and correct?

7. It is not in dispute that the first respondent herein sustained injuries in an accident that took place on 29.11.2002 while he was working as driver on Tractor and Tractor bearing No. AP03 V 3360 & 3361 belonging to second respondent herein. As seen from the record, the claimant was examined as AW-1 and in his evidence he reiterated the averments of claim petition and further stated that he sustained injuries to his right clavicle and pelvis and left knee. He also deposed that he got admitted in SVRRG Hospital, Tirupati and took treatment and because of the injury, he is unable to walk and squat properly. He stated that he became physically disabled to drive any vehicle on account of injuries and that he lost his earnings and through him certified copy of the wound certificate is marked as Ex. A3 and disability certificate is marked as Ex. A4. He was cross-examined on behalf of Insurance Company and except putting suggestions nothing could be elicited from him to discredit his testimony with regard to injuries and the disability sustained by him. He asserted in his cross-examination that the disability certificate was issued by Medical Board but he denied the suggestion that the percentage of

disability is high and excessive. No witnesses were examined on behalf of the Insurance Company to rebut the evidence of AW-1. Considering these aspects lower authority granted compensation of Rs. 1,22,445/- besides stamp duty of Rs. 245/-.

8. The first objection of the Advocate for Insurance Company is that the lower authority took the loss of earning capacity at 30% without there being any medical evidence. He submitted that the medical officer was not examined and percentage taken by the lower authority towards loss of earning capacity is only on imagination, therefore, it cannot be accepted. For this objection, advocate for claimant submitted that when the medical certificate was marked without any objection and its genuineness was not disputed, non examination of medical officer is not fatal. To support that submission, reliance is placed on the decision of Supreme Court in **Raj Kumar v. Ajay Kumar and another** (supra -4).

Paragraphs 22 & 23 read as under:

“22. We may in this context refer to the difficulties faced by the claimants in securing the presence of busy surgeons or treating doctors who treated them, for giving evidence. Most of them are reluctant to appear before the Tribunals for obvious reasons either because their entire day is likely to be wasted in attending the Tribunal to give evidence in a single case or because they are not shown any priority in recording evidence or because the claim petition is filed at a place far away from the place where the treatment was given. Many a time, the claimants are reluctant to take coercive steps for summoning the doctors who treated them, out of respect and gratitude towards them or for fear that if forced to come against their wishes, they may give evidence which may not be very favourable. This forces the injured claimants to approach “professional” certificate givers whose evidence most of the time is found to be not satisfactory.

23. The Tribunals should realize that a busy surgeon may be

able to save ten lives or perform twenty surgeries in the time he spends to attend the Tribunal to give evidence in one accident case. Many busy surgeons refuse to treat medico-legal cases out of apprehension that their practice and their current patients will suffer, if they have to spend their days in Tribunals giving evidence about past patients. The solution does not lie in coercing the doctors to attend the Tribunal to give evidence. The solution lies in recognizing the valuable time of doctors and accommodating them. Firstly, efforts should be made to record the evidence of the treating doctors on commission, after ascertaining their convenient timings. Secondly, if the doctors attend the Tribunal for giving evidence, their evidence may be recorded without delay, ensuring that they are not required to wait. Thirdly, the doctors may be given specific time for attending the Tribunal for giving evidence instead of requiring them to come at 10.30 a.m or 11.00 a.m and wait in the court hall. Fourthly, in cases where the certificates are not contested by the respondents, they may be marked by consent, thereby dispensing with the oral evidence. These small measures as also any other suitable steps taken to ensure the availability of expert evidence, will ensure assessment of just compensation and will go a long way in demonstrating that courts/Tribunals show concern for litigants and witnesses.”

9. As seen from the above paragraphs, it is clear that where the medical certificates are not contested by the respondents, they may be marked by consent, by dispensing with the presence of the medical officer. Here it is clear from the record when the medical certificate is marked no objection was raised on behalf of the insurance company for marking the medical certificate as Ex. A4. Even in the appeal no plea is taken questioning the genuineness of disability certificate. Further, it is elicited from the claimant that Ex. A4 was issued by Medical Board. Therefore, as rightly pointed out by the advocate for claimant, the objection of the insurance company with regard to non-examination of the doctor is not tenable.

10. The second objection of the insurance

company that the claimant himself stated in his claim application that he was getting Rs. 2,000/- as salary but the lower authority took Rs. 3,337/- as salary and the same is not permissible. He referred to the judgment of this Court in ***New India Assurance Co.Ltd., Gudivada v. Mandava Krishna Kumari and others*** (supra-1), wherein at paragraph 7 held thus:

“7. Therefore, in view of the above circumstances, the Insurance Company cannot contend that there is no liability. But, however, as can be seen from the record, the claimants themselves claimed that the deceased was drawing a salary of Rs. 2,500/- including batta. When such is the claim of the claimants, the liberal attitude shown by the Commissioner in invoking the minimum wages and fixing the income of the deceased at Rs. 3,175/- is not proper and on that ground the award has to be interfered. Therefore, the applicants will be entitled to a compensation of Rs. 2,23,112.50 (Rs. 2,500/- x 50/100 x 178.49).”

11. Referring to the above judgment, advocate for claimant submitted that the claimant therein was drawing salary of Rs. 2,500/- including batta and the Commissioner took minimum wages of Rs. 3,175/-, in such circumstances, this Court held that it is not proper but here in this case, the claim of the claimant is Rs. 2,000/- towards wages and Rs. 50/- per day towards batta and total comes to Rs. 3,500/- per month, but the Commissioner took only Rs. 3,337/-, therefore, that decision cannot be applied here. I find some force in the submission of the advocate for claimant because as seen from the evidence, it is specifically contended that the first respondent herein was getting salary of Rs. 2,000/- per

month besides batta of Rs. 50/- per day. Even the employer i.e., second respondent herein filed counter in the same lines, which is not at all denied by the Insurance Company specifically in their counter. Therefore, the objection with regard to the wages is also not tenable and the decision relied on by the Insurance Company has no application.

12. The next ground on which the Insurance Company challenged the award of the lower authority is that the Commissioner erred in granting interest for the total period though there was delay of two years in preferring the claim. Advocate for Insurance Company has relied on decisions of the Supreme Court in **Mahamooda and others vs. United India Insurance Co. Ltd and others** (Supra-2) and **P.J. Narayan v. Union of India and others** (Supra-3). In **Mahamooda and others vs. United India Insurance Co. Ltd and others** (supra -2), in which Supreme Court clearly observed that the claimant is not entitled to any interest for the delayed period. With regard to delay in approaching Tribunal, advocate for claimant has not disputed the principle laid down in these two decisions and submitted that interest granted by the lower authority to the delayed period is not correct and award may be modified to that extent.

13. Considering the submissions of both sides, the award of the lower authority can be modified with regard to interest stating that the claimant is not entitled for interest

granted by the lower authority for the period of delay with which the claimant approached the Commissioner for Workmen Compensation.

14. In view of my foregoing observations and findings, the appeal is dismissed observing that the claimant is not entitled for interest for the period of delay. With that modification, the award of the lower authority is confirmed. The Insurance Company is entitled to get back the interest amount for the delayed period if it is already deposited. As a sequel, miscellaneous petitions, pending if any, shall stand closed.

S. RAVI KUMAR, J

Date: 26.07.2016.

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[\[1\]](#) 2012 (4) ALD 266

[\[2\]](#) 2006 ACJ 2825

[\[3\]](#) 2004 ACJ 452

[\[4\]](#) (2011) 1 SCC 343