

SMT JUSTICE ANIS
CIVIL MISCELLANEOUS APPEAL No.2595 of 2004

JUDGMENT:

This appeal is filed by the appellant-claimant under Section 30 of the Workmen's Compensation Act, 1923 (for short, 'the Act') aggrieved by the order dated 09.10.2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad (for short, 'the Commissioner for Workmen's Compensation') in W.C.No.49 of 2002 awarding compensation of Rs.1,10,021/-.

2. The appellant-claimant filed the above Workmen's Compensation case under Section 22 of the Act claiming compensation of Rs.2,50,000/- on account of the personal injuries sustained by him in an accident that occurred on 09.09.2001.

3. The appellant herein, who is the applicant before the Commissioner for Workmen's Compensation, filed an application under Section 22 of the Act against the Opposite Parties claiming compensation of Rs.2,50,000/- for the personal injuries sustained by him during the course of employment under the Opposite Party No.1. The applicant was working as a labourer under the control of Opposite Party No.1 and earning a sum of Rs.5,000/- per month. During the course of employment on the instructions of Opposite Party No.1, the applicant was travelling along with other labourers in a Auto Trally bearing registration No.AP 25T 5180 from

Kisan nagar to Chepoor village after attending the ceremony of Maisamma festival pertaining to Toddy Shoppers on 09.09.2001 and when they reached near Ring Road at Balkonda village shivar on NH-7 at about 8.00 A.M., the driver of the said Auto Trally drove the vehicle in a rash and negligent manner at high speed and tried to escape a lorry, which was coming in the opposite direction and turned turtle, due to which the applicant received grievous injuries and therefore, prayed the Commissioner for Workmen's Compensation to grant the compensation against the Opposite Parties 1 and 2 along with future interest @ 24% per annum.

4. Opposite Party No.1 filed a counter and admitted the accident, employment, age and salary of the workman and also stated that the vehicle was insured with Opposite Party No.2 and the Opposite Party No.2 is alone liable to pay the compensation.

5. Opposite Party No.2 filed the counter and denied all the material allegations made in the application, filed by the applicant, and put the applicant to prove the manner of accident, age and income of the applicant and finally prayed the Commissioner for Workmen's Compensation to dismiss the application.

6. Basing on the pleadings, the Commissioner for Workmen's Compensation framed two issues, and to substantiate the claim, the applicant examined himself as PW.1 and also got examined Dr. L.Ramulu as PW.2 and got marked exhibits A1 to A10. On behalf of the Opposite Party No.2, the Assistant Divisional Manager of the Insurance Company was examined as RW.1 and got marked the Xerox copy of Insurance Policy as Ex.B.1.

7. After considering the oral and documentary evidence, the Commissioner for Workmen's Compensation has awarded the compensation of Rs.1,10,021/- to the applicant.

8. Being not satisfied with the said compensation, the applicant filed the present appeal.

9. Learned counsel for the appellant-applicant argued that the Commissioner for Workmen's Compensation has granted a meagre compensation without considering the oral and documentary evidence and that he has no power to reduce the disability and also the wages given by the Opposite Party No.1. Learned counsel also argued that in the accident the appellant received grievous injuries and therefore, the Doctor rightly assessed the disability at 55% permanent partial disability, but the Commissioner for Workmen's Compensation has taken only the disability at 45% and therefore, prayed the Court to enhance the compensation.

10. On the other hand, learned counsel for the Insurance Company-respondent No.2 argued that the appellant has not filed proper evidence, as he was admitted in the Government Hospital and the record of the Government Hospital was not produced. It is further argued that PW.2, who treated the appellant, has issued a disability certificate, but he is not competent to issue such certificate, as the appellant took the treatment in the Government Hospital and the certificate should have been issued by the Medical Board where the appellant has taken treatment. The Commissioner for Workmen's Compensation after considering the oral and documentary evidence rightly granted reasonable compensation and therefore, the said finding needs no interference and prayed the Court to dismiss the appeal with costs.

11. Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

1. Whether the compensation awarded by the Commissioner for Workmen's Compensation is just and reasonable?
2. Whether the appellant-applicant is entitled for enhancement of compensation as prayed for?

12. **POINTS:** A perusal of the evidence of PW.1 and exhibits A.1 and A.2 and also the admissions in the counter of Opposite Party No.1 shows that there is no dispute. The accident was occurred on 09.09.2001 due to rash and negligent driving of the driver of Auto Trally, in which the appellant sustained injuries. As per the admission in the counter filed by the Opposite Party No1, the applicant was working as a labourer with Opposite Party No.1, who is the owner of vehicle bearing registration No.AP 25T 5180. Further, during the course of employment the applicant received injuries in the accident caused by the driver of Opposite Party No.1. PW.1 in his evidence clearly stated how the accident has been taken place and there is no contra evidence produced by the Opposite Parties 1 and 2 to disprove the manner of accident. Therefore, the finding of the Commissioner for Workmen's Compensation regarding the manner of accident needs no interference and also the finding that the accident occurred during the course of employment under the Opposite Party 1 also needs no interference. According to PW.1, after the accident he was shifted to the Government Hospital, Nizamabad and he took treatment in the said Hospital for the injuries like fracture on left shoulder, injuries on left hand middle finger, left knee joint and injuries on head, legs, hands, back, chest and other parts of the body. PW.1 also stated that the Police, Balkonda registered a case

in Cr.No.89/2001 dated 09.09.2001 under Section 337 I.P.C. PW.1 also stated in his evidence that the Opposite Party No.1 used to pay Rs.5,000/- per month as wages and at the time of accident, he was 19 years old.

13. PW.2 is an Orthopaedic Surgeon. In his evidence, he stated that he assessed the disability of applicant as 55% permanent partial disability. He also assessed the loss of earning capacity of the applicant as 55%. In the cross-examination, PW.2 denied the suggestion that he issued the Disability Certificate without examining PW.1 and without any medical basis.

14. It is pertinent to note that the Workmen's Compensation Act is a beneficial piece of legislation conceived in the interest of the workmen, who are the victims of accidents arising out of and in the course of employment and the Act provides for cheaper and quicker disposal relating to compensation through Special Tribunals.

15. To disprove the evidence of RW.1, who was examined on behalf of the Insurance Company, RW.1 denied the suggestion that at the time of accident the vehicle was carrying the goods on the instructions of the Opposite Party No.1. But, to disprove the evidence of PW.1, Opposite Party No.2 has not produced any material regarding the manner of accident and the injuries sustained by the applicant. The

Commissioner for Workmen's Compensation after perusing the evidence of PW.1 held that he exaggerated the disability suffered by the applicant and reduced the disability from 55% to 45%. A perusal of the record shows that the Commissioner for Workmen's Compensation has fixed the monthly wages at Rs.1,800/- per month, though PW.1 in his evidence stated that the Opposite Party No.1 was paying Rs.5,000/- per month. Considering the said aspect, it is reasonable to fix Rs.2,500/- per month as wages prevailing during the course of time. The age of applicant, loss of earning capacity and relevant age factor were rightly considered by the Commissioner for Workmen's Compensation. In view of the above, the appellant is entitled to the following amount of compensation:

Monthly wages of the appellant	Rs.2,500/-
Age of the appellant	18 years
Loss of earning capacity	45%
Relevant age factor	226.38
Compensation	60% of the wages X relevant age factor X percentage of loss of earning capacity = $2500 \times 60 / 100 \times 226.38 \times 45 / 100 = 152806.5$ rounded to Rs.1,52,806/-

In the result, the appeal is partly allowed by enhancing the compensation awarded by the Commissioner for Workmen's Compensation to the appellant-claimant from Rs.1,10,021/- to Rs.1,52,806/- (Rupees One lakh fifty two thousand eight hundred and six only) with interest at the rate of 12% per annum from the date of application till realization. No order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

25.11.2016
MVA



ANIS, J