THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.512 of 2009

Date:16.03.2016

Between:

The National Insurance Company
Limited, Rep by its Divisional Officer-III,
Chenoy Trade Center, Parklane,
Secunderabad.

... Appellant.

AND

Sri Mohd. Safdar,
Hyderabad and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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JUDGMENT:

This appeal is preferred questioning order dated 07-03-2005 in W.C.No.93/2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad.

2. First respondent herein submitted application to the Commissioner for Workmen's Compensation contending that he was driver on lorry bearing No.AP-29-T-1969 belonging to second respondent herein and on 11-05-2004, while he was proceeding from Monda Market towards Narsaraopet with load of vegetables in the vehicle, involved in an

accident on account of which, he sustained fractures to his left leg besides other injuries. He contended that he was getting a salary of Rs.4,000/- per month besides batta and on account of injuries, he is unable to do any work and he lost his employment and suffered a total disability and claimed a sum of Rs.5,00,000/- as compensation. Appellant-Insurance Company opposed claim of the injured and contended that the claimant has to prove the relationship of employee and employer between himself and the second respondent herein and that he sustained injuries during course of employment. It is further contended that there is no privity of contract and that the insurance policy does not cover the risk of injured-workman and that the insurance company is not liable to pay any compensation. It is further contended that the claim is high and excessive.

3. On these contentions, lower authority conducted enquiry during which, two witnesses were examined and fourteen documents were marked on behalf of the injured-claimant and one witness was examined and one document was marked on behalf of the insurance company. On a over all consideration of oral and documentary evidence, lower authority granted Rs.1,09,240/- as against the claim of Rs.5,00,000/- by taking the wages of the injured at Rs.3,773-50 P.S and loss of earning capacity at 35%. Aggrieved by the said order, insurance company preferred the present appeal.

4. Heard arguments.

5. Advocate for appellant-insurance company submitted that the lower authority ought to have seen that applicant failed to examine his employer to prove the relationship of employee and employer and also his salary. It is further submitted that the lower authority, without any evidence, arbitrarily fixed Rs.3,773-50 P.S per month as wages of the injured and that there is no documentary evidence in proof of the same. It is further submitted that though the treatment record shows that the hospitalization is only from 25-05-2004 to

10-06-2004, the lower Tribunal has also taken into consideration the period from 11-05-2004 to 21-05-2004 and the same is erroneous.
It is further submitted that the lower authority has fixed the loss of earning capacity though the medical officer i.e., R.W.1 examined on behalf of the insurance company categorically stated that the disability was only 15% to 20%. He submitted that lower authority failed to consider these aspects and therefore, the order of the lower authority has to be set aside.

6. On the other hand, Advocate for claimant-first respondent submitted that medical officer examined on behalf of claimant as A.W.2 clearly deposed in his evidence that injured cannot sit and squat and cannot walk for long distances and cannot do any work. He submitted that the loss of earning capacity as assessed by the medical officer was taken into consideration by the lower authority. He submitted that though the injured sustained 100% loss of earning capacity, only 35% was taken and there are no grounds to interfere with the order of the lower authority.

7. Now the point that would arise for my consideration in this appeal is whether order of the Court below is legal, proper and correct?

8. **<u>Point</u>:-** According to claimant, he was working as driver on lorry bearing No.AP-29-T-1969 and that he sustained injuries during course of his employment on 11-05-2004. He was examined as A.W.1 and he deposed in his evidence the manner in which he sustained injuries and through him, the documents relied on by him were marked. He deposed that he sustained fracture of left leg and that he took treatment in the hospital and he suffered permanent disability and loss of earning capacity. Dr. G. Subash Rao, who was examined as A.W.2 deposed that he is an Orthopedic Surgeon and he treated A.W.1 i.e., injured, who came to him on 24-11-2004 with Grade-III compound fracture of left tibia, and that before coming to him, the injured took treatment in Osmania General Hospital from 22-05-2004 to 10-06-2004. A.W.2 deposed that the injured cannot sit and squat on the floor, cannot walk for long distance and cannot do any work and that he cannot drive a vehicle as he was doing

earlier. He also deposed that he would need one more surgery and on the date of examination, there is still stiffness of left knee, left ankle and that the applicant is walking with limps and still suffering with severe pain. He deposed that according to him, the physical disability was 30%, which is partial permanent in nature, through him the disability certificate Ex.A7 was marked. As against this, the insurance company examined Dr.V.K.V. Prasad, Orthopedic Surgeon, Gandhi Hospital and he deposed that the applicant sustained Grade-III fracture of shaft left tibia and he was admitted in Osmania General Hospital and he was treated conservatively with pop and deposed that the fracture is united clinically with minimal deformity of leg and stiffness of knee and ankle and the applicant may not be able to drive a heavy vehicle as he was doing earlier for about three or four months. By considering the evidence of these two medical officers with reference to other evidence on record, the lower authority has accepted the evidence of A.W.2 and fixed the loss of earning capacity at 35%. On a scrutiny of the material on record, I do not find any wrong in the approach of the lower authority and it rightly accepted the evidence of A.W.2, which is supporting and corroborating with medical record. Whereas the evidence of R.W.1 is not supported by any medical record produced on behalf of first respondent. Therefore, the objection of the insurance company with regard to loss of earning capacity fixed by the lower authority cannot be sustained.

9. The other objection of the insurance company is that the lower authority has taken Rs.3,777-50 P.S., as wages of the injured-claimant without any basis. The injured-claimant contended that he was getting Rs.4,000/- per month as salary besides daily batta.
He was examined as A.W.1 and in his evidence, he has deposed in the same lines with regard to his income though he said that he also receiving daily batta from owner, he has not deposed as to the quantum of daily batta. The lower authority has not accepted the wages as deposed by the injured-claimant, as no specific evidence was produced like examining the employer or producing salary certificate, therefore lower

authority has taken into consideration the minimum wages fixed by Government of Andhra Pradesh in Public Motor Transport Schedule Employment as per G.O.Ms.No.30, dated 27-07-2000 and basing on that, the basic wage of Rs.2,587/- for goods vehicle and the VDA payable on such wage was taken into consideration and the total wages was fixed as Rs.3,777-50 P.S only on the basis of minimum wages fixed by the Government of Andhra Pradesh. When the parties have not produced any evidence with regard to salary and wages, the minimum wages fixed by the Government have to be taken into consideration and the lower authority has rightly applied that method and therefore, the objection of the insurance company with regard to wages as taken by the lower authority cannot be sustained.

10. On a scrutiny of the entire material, I am of the considered view that the objections taken by the insurance company are not at all tenable and the lower authority has rightly fixed the compensation and therefore, there are no grounds to interfere with the same.

11. For these reasons, appeal is liable to be dismissed as devoid of merits.

12. Accordingly, appeal is dismissed as devoid of merits
and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed. No costs.

JUSTICE S. RAVI KUMAR

Date:16.03.2016
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