

THE HON'BLE SMT JUSTICE ANIS

C.M.A.NO.2447 OF 2004

JUDMENT

This appeal is filed by the appellant – Insurance Company under Section 30 of Workmens' Compensation Act, 1923 (for short 'the Act') aggrieved by the order dated 14.5.2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, in W.C.No.226/2003 NF awarding compensation of 96,768/-

The 1st respondent herein filed application under Section 22 of the Act claiming compensation of Rs.4,00,000/- along with interest, for the injuries sustained by him.

For the sake of convenience, the parties are referred to as arrayed before the lower authority.

The brief averments made in the application are that the applicant was working as cleaner on lorry bearing No.APJ 7448 under the control of the first opposite party on a monthly salary of Rs.4,000/-. On 21/22-12-2001 at midnight 12-00 hours, the driver of the lorry bearing No. APJ 7448 while returning from Srinivasa Industry, Khanapur after unloading the paddy to Gunj, Nizamabad, while taking turn, drove the lorry in a rash and negligent manner with high speed and dashed against the compound wall of one P.Pentaiah, due to which, he fell down from the vehicle and sustained fracture of his left thigh and injuries to other parts of the body. The applicant stated that he was earning an amount of Rs.4,000/- per month and that he is aged 20 years at the time of accident and that when he approached the owner of the lorry for payment of compensation, he refused to pay the same. Therefore, he filed the claim petition before the lower authority for payment of compensation of an amount of Rs.4,00,000/-. According to the applicant, both insured and the insurer are liable to pay the compensation.

The owner of the vehicle, who is the 1st opposite party, remained ex party. The 2nd opposite party – Insurance company filed counter affidavit and denied the material allegations in the application.

Based on material on record, the authority below framed the following issues:

1. Whether the applicant is a 'workman' within the meaning of the Act and whether the accident occurred during the course of employment under opposite party No.1?
2. If so, to what relief the applicant is entitled and against which of the opposite party?

To substantiate his claim, the claimant examined himself as P.W.1 and the doctor who treated him as P.W.2 and got marked Exs.A-1 to A-6. On behalf of opposite parties, no evidence either oral or documentary was adduced.

Considering the evidence on record, the lower authority awarded an amount of Rs.96,768/- as compensation and made both the insured and the insurer liable to pay the same.

Aggrieved by the impugned order dated 14.5.2004, the Insurance Company which is the 2nd opposite party before the authority below, filed the present appeal.

The learned counsel appearing for the appellant – insurance company submitted that the authority below without considering the evidence on record, awarded compensation. He further submitted that the applicant failed to discharge his burden of proving the employee-employer relationship. He stated that the evidence on record goes to show that the applicant was treated at Government Hospital after the accident, therefore, the evidence that P.W.2 treated the applicant cannot be believed. As the authority below awarded compensation without considering the relevant evidence on record, sought to set aside the same.

On the other hand, the learned counsel for the applicant/1st respondent argued that in the accident the petitioner sustained fracture to left femur, abrasion to back side, head injury, multiple and grievous injuries on various parts of the body and thus suffered partial permanent disability, assessed at 65% and loss of earnings at 50 percent. The Commissioner after considering the entire evidence, both oral and documentary, awarded a meager compensation of Rs.96,768/- and the same is just and reasonable and, therefore, sought to dismiss the appeal.

From a perusal of the material evidence on record it could be seen that P.W.1 in his evidence clearly stated that he was employed as cleaner in lorry bearing No. APJ 7448 under the control of the opposite party No.1, who is the driver of the said lorry, on a monthly salary of Rs.4,000/-. No contra evidence was produced by the Insurance Company to dispute the said fact.

On evidence, the authority below found that on the intervening night of 21/22-12-2001, while the applicant was working in the crime lorry, due to the rash and negligence driving of the driver of the vehicle, it met with the accident and the applicant sustained injuries and immediately he was treated at Government Hospital and, thereafter shifted to private hospital, where P.W.2, who is the Consultant Orthopedic surgeon, Nizamabad treated him.

Though the applicant claimed compensation of Rs.4,00,000/-, the authority below / Commissioner, after considering the oral and documentary evidence awarded an amount of Rs.96,768/- and in view of the above facts and circumstances and the evidence available on record, I am of the considered view, the said amount is just and reasonable and the findings in this regard, warrants no interference.

The appeal is accordingly dismissed. No costs.

Miscellaneous petitions pending if any, shall stand closed.

AVS

26—09—2016