

HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.1849 of 2004

J U D G M E N T

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This appeal is filed by the appellant/second respondent under Section 30 of the Workmen's Compensation Act, 1923 (for short 'the Act'), aggrieved by the order dated 23.04.2004, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-II, in W.C.No.71 of 2003, awarding compensation of Rs.2,43,211/-.

2. The first respondent/applicant filed the above W.C claiming compensation of Rs.3,00,000/- on account of the injuries received by him in a motor vehicle accident that occurred on 20.02.2003, during the course of employment.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in W.C.

4. The brief averments made in the petition are that the applicant is employed by the first respondent as a labourer/ representative on his Delivery Van bearing No.AP.13V.2918. On 20.02.2003, the driver of the vehicle and applicant were proceeding in the said vehicle from Kyasaram village towards Isnapur village and while they reached the Kargi Company, the driver of the vehicle drove the vehicle in a rash and negligent manner, due to which the vehicle turned turtle and the applicant received head injury, injuries on his hands, fracture to left leg and injuries all over the body. Applicant was shifted to Gandhi Hospital, Secunderabad, admitted as inpatient, operations were conducted and nails were inserted to him. According to the applicant, first respondent used to pay Rs.2,000/- p.m as salary and Rs.20/- as batta to him. Due to the fracture injuries, he sustained 100% loss of

earning capacity. Police, Pattancheruvu registered a case in Cr.No.57 of 2003 against the driver of the vehicle. Applicant also stated that the first respondent, who is the owner of the vehicle, paid premium of Rs.25/- to the second respondent for employee and as such, he is entitled to claim compensation of Rs.3,00,000/-. Further, he was removed from service by the first respondent due to the injuries and disability.

5. First respondent filed counter and denied the relationship of workmen and employer.

6. The second respondent-Insurance Company filed the counter and also denied the relationship of first respondent with the applicant and disputed the age, injuries and treatment taken by him. According to the second respondent-Insurance Company, the applicant received only simple injuries and further denied that the crime vehicle was having subsisting policy on the date of accident. It also denied that the first respondent paid Rs.25/- towards additional premium for the employee and finally prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Commissioner framed five issues and to substantiate the applicant's claim, PWs.1 to 3 were examined and Exs.A1 to A13 got marked. On behalf of the respondents, RWs.1 & 2 were examined and Exs.B1 to 3 got marked.

8. After considering the oral and documentary evidence available on record, the Commissioner held that the applicant received injuries during the course of employment with the first respondent and awarded compensation of Rs.2,43,211/- to the applicant against both the respondents.

9. Aggrieved by the order, dated 23.04.2004, passed by the Commissioner for Workmen's Compensation, second respondent-

Insurance Company filed the present appeal.

10. The learned counsel appearing for the appellant/second respondent mainly argued that the first respondent, who is the employer of the applicant, in his counter and in his evidence denied the relationship between the applicant and the first respondent as employee and employer. Further, no premium was paid by the first respondent to second respondent as labourer and applicant is an unauthorised passenger, as such he is not entitled to claim any compensation and the Assistant Commissioner failed to appreciate these facts on record. It is also argued that the disability suffered by the applicant was only 60%, but the Assistant Commissioner erroneously fixed the disability at 100%. Therefore, prayed the Court to set aside the order dated 23.04.2004 passed by the Assistant Commissioner.

11. On the other hand, the learned counsel for the first respondent applicant argued that the Assistant Commissioner has rightly considered the evidence on record and has granted a reasonable compensation to the applicant and as such, prayed the Court to dismiss the appeal by confirming the order passed by the Assistant Commissioner.

12. None appeared on behalf of the second respondent though paper publication was given.

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

Whether the appellant is entitled for exoneration of payment of compensation awarded by the Commissioner as prayed for?

14. **P O I N T:** A perusal of the evidence of RW.1 shows that he purchased the auto and let out for rent and the said auto has no connection with his shop and one Narasimha Reddy was driving the vehicle and denied that the applicant is his employee and he was paying monthly salary of Rs.3,000/- and Rs.20./- towards batta. The learned counsel for the appellant argued that when there is no relationship of employee and employer between the applicant and first respondent, the Insurance Company is not liable to pay any compensation. Further, no premium was paid to the labourer working in the auto. RW.1 also denied that the applicant was employed on his auto to load and unload material. The evidence of RW.1 is very much important and this fact is not considered by the learned Assistant Commissioner and awarded compensation. When the first respondent (RW.1) denied the relationship with the applicant, the applicant ought to have examined the driver of the vehicle to know under what capacity the applicant was proceeding on the said vehicle. In these circumstances, the applicant failed to prove his relationship with the first respondent as employee and employer and the accident occurred during the course of employment, as such the applicant is not entitled for any compensation from the respondents. In so far as the compensation already awarded is concerned, while admitting the appeal, this Court passed an order dated 07.07.2004 directing the appellant/second respondent to deposit the entire amount of compensation and permitted the applicant to withdraw half of the deposited amount without furnishing any security. Therefore, basing on the said order, if the applicant has withdrawn half of the deposited amount, the appellant/second respondent is not entitled to recover the same from the applicant, but is entitled to receive remaining amount deposited in the Bank.

15. With this observation the Civil Miscellaneous appeal is partly

allowed. No order as to costs. Miscellaneous Petitions, if any,
pending in this appeal shall stand closed.

ANIS, J

Date: .04.2016
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