

THE HON'BLE SMT. JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL NO. 4630 OF 2003

JUDGMENT:

This appeal is filed by the appellant/2nd opposite party under Section 30 of the Workmen's Compensation Act, 1923 (for short 'the Act'), aggrieved by the award dated 12.05.2003, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Kadapa in W.C.No.4 of 2002, awarding compensation of Rs.1,45,817/- to the respondent No.1/applicant.

2. The respondent No.1/applicant filed the above W.C. claiming compensation of Rs.1,00,000/- for the injuries sustained by him in a motor vehicle accident occurred on 21.12.2001, out of and during the course of employment.

3. For the sake of convenience, the parties are referred to as arrayed in the W.C. before the Commissioner for Workmen's Compensation.

4. The brief averments made in the petition are that the applicant was working as a driver under 1st opposite party in a lorry bearing No.AP04T 1845 on payment of monthly wages of Rs.4,000/-. On 21.12.2001, he received grievous injuries in the accident and he was treated in the Government hospital. According to the applicant, he suffered 30%

disability. Therefore, he is entitled to claim compensation of Rs.1 lakh from both the opposite parties.

5. 1st opposite party remained *ex parte* before the Commissioner for Workmen's Compensation on 30.04.2002.

6. The brief averments made in the counter filed by 2nd opposite party are as follows:

The opposite party put the applicant to prove the manner of accident, age, income, injuries received by him and the treatment taken in the Government hospital. It is stated that the applicant has not suffered any disability and put him to strict proof of the same, and finally prayed the Court to dismiss the petition.

7. Basing on the pleadings, the Commissioner for Workmen's Compensation framed six issues and to substantiate the issues, the applicant himself was examined as AW1 and examined the doctor who treated him as AW2, and got marked Exs.A.1 to A.6. On behalf of 2nd opposite party, RW1 was examined and got marked Ex.B.1.

8. After considering the oral and documentary evidence, the Commissioner for Workmen's Compensation having held that the applicant was employed by 1st opposite party as a driver in his lorry and he was on duty at the time of accident on 21.12.2001, awarded compensation of Rs.1,45,817/- along with interest at 9% per annum.

9. Aggrieved by the award passed by the Commissioner for Workmen's Compensation, 2nd opposite party-insurance company preferred the present appeal.

10. The learned counsel for the appellant/2nd opposite party argued that though there is no provision in the Act, the Commissioner for Workmen's Compensation awarded 9% interest. It is further argued that the Commissioner for Workmen's Compensation has not properly appreciated the evidence of AW2 the doctor who assessed the disability of the applicant, and finally prayed the Court to allow the appeal.

11. Though notices were served on 1st respondent-applicant, none represented him.

12. Having regard to the submissions made by learned counsel for appellant, the only point that arises for consideration is:

Whether the appellant/insurance company is entitled to set aside the award dated 12.05.2003 as prayed for?

13. **Point:**

1st respondent/applicant was examined as AW1 and filed Ex.A.1 – copy of the F.I.R. On perusal of the evidence of 1st respondent/applicant coupled with the documentary evidence, it is proved that on 20.12.2001, he was the driver on the lorry bearing No.AP04T 1845 and he was working

under 2nd respondent herein on a monthly wages of Rs.4,000/-. Further, it is proved that on the date of accident, when 1st respondent/applicant was proceeding from Madras to Kadapa and at about 3.00 a.m., when the lorry reached near Ramanjaneyapuram on Kadapa-Rajampet road, the lorry turned turtle to the left side of the road having lost control over the steering, due to which 1st respondent/applicant sustained grievous injuries.

14. To disprove the evidence of AW1, the appellant herein has not produced any evidence. Therefore, there is sufficient evidence to prove that the applicant was employed by 2nd opposite party herein as a driver of his lorry and the applicant was on duty at the time of accident on 21.12.2001 and that finding of the Commissioner for Workmen's Compensation needs no interference.

15. Coming to the quantum of compensation, the Commissioner for Workmen's Compensation, after considering the evidence of AW2 the doctor, held that the appellant suffered disability at 30% and awarded compensation of Rs.1,45,817/-. To disprove the evidence of AW2, Orthopaedic doctor, the insurance company has not produced any evidence except the evidence of RW1. Therefore, I am of the view that the Commissioner for Workmen's Compensation, on considering the oral and documentary evidence, rightly awarded just and reasonable

compensation of Rs.1,45,817/- to the applicant and the said finding needs no interference.

16. The main contention of the learned counsel for the appellant is with regard to the interest awarded to the applicant. The Commissioner for Workmen's Compensation awarded 9% interest per annum to the applicant. Now, the Act has been amended and in pursuance of the amended Act, the applicant is entitled for the interest at 9% per annum. Therefore, the finding of the Commissioner for Workmen's Compensation in this regard needs no interference.

17. Accordingly, the appeal is dismissed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

19.09.2016
Anr

(ANIS, J)

THE HON'BLE SMT. JUSTICE ANIS



CIVIL MISCELLANEOUS APPEAL NO. 4630 OF 2003

19.09.2016

Anr