

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A.No.1470 of 2004

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the Appellant/claimant challenging the Award Dt. 09.02.2004 in W.C.No.332 of 1997 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad.

2. The claimant during the course of his employment under Opposite Party No.1 as cleaner while traveling in a bus bearing No.AP 25 T 1991 met with an accident when the bus was hit by a Lorry Bearing No. ALL 4559 on Renugunta-Kodur Road, near Amar Raja Factory and suffered compound fracture of both bones of left leg and suffered disability. He filed W.C.No.332 of 1997 claiming Rs.2,00,000/- as compensation against Opposite Party Nos. 1 and 2, who are owner and insurer of the Bus AP 25 T 1991. The Commissioner, after due enquiry, awarded a sum of Rs.95,632/- as compensation. Hence, the instant appeal.

3. Heard Sri K. Mahender Reddy, learned counsel for appellant/claimant and Sri V. Srinivasa Rao, learned counsel for Respondent No.2 and the case against R.1 was dismissed as default.

4. Challenging the compensation awarded as substantially low and inadequate, learned counsel for Appellant/claimant firstly argued that the claimant suffered compound fracture of both bones of left leg, which resulted in shortening of leg by 2 cms and consequent disability at 60% as deposed by PW.2—the Doctor, and the Doctor also issued Disability Certificate and despite the same,

the Commissioner has accepted only 40% disability and thereby compensation was drastically reduced. He further argued that the Commissioner has not awarded any interest on the compensation amount and as per the authoritative judgments, he is entitled to 12% interest. He, thus, prayed to allow the appeal and enhance the compensation.

5 a). Per contra, learned counsel for respondent No.2/insurance company would argue that the injuries suffered by the claimant are non-scheduled injuries and as the claimant was a young person, fracture injuries could well be united not posing any difficulty for attending his regular activities and therefore, the Commissioner has rightly fixed disability at 40% and there is no need to revise the same.

b) Learned counsel further argued that the claimant is not entitled to any interest.

6. In the light of the above rival arguments, the point that arises for consideration is:

“whether the compensation awarded by the Commissioner under Workmen’s Compensation Act, is just and reasonable or needs interference ?

7. **POINT:** As can be seen from the Award, the claimant while traveling in the bus bearing No.AP 25 T 1991 as cleaner met with an accident when a lorry bearing No. AIL 4559 hit their vehicle near Renugunta-Kodur Road, Amar Raja Factory while he was attending the repairs of the bus at that time. Due to the impact of hit, the claimant suffered injuries. PW.2/Doctor—L. Ramulu, Consultant Orthopaedic Surgeon, Khaleelwadi, Nizamabad, stated

in his evidence that he examined the claimant and found compound fracture of both bones of left leg and therefore, the claimant was examined in District Head Quarters Hospital, Hyderabad and operation was conducted and rods were inserted. The Doctor further stated that on 10.05.2001 he examined the claimant clinically and physically and found that he suffered functional disability at 60% due to mal-united fracture of both bones of left leg causing shortening by 2 Cms. He further deposed, the movement of the left leg was painful and restricted at left knee. Thus, the Doctor estimated the disability of the claimant at 60%.

8. However, the Commissioner opined that loss of earning capacity due to disability is only 40% and accordingly, taken the disability at 40%. In considered view of this Court, the said fixation appears to be slightly on lower side. In view of the evidence of PW.2, there can be no doubt that the claimant suffered compound fracture of both bones of left leg, for which, he underwent operation and the rods were inserted in his left leg. The finding of PW.2 was that the movement of the left knee of the claimant was restricted and his left leg was shortened by 2%. In these circumstances, the disability in my view, can be taken as 50% as partial permanent having regard to the fact that the claimant was a cleaner before the Accident and disability will adversely effect his earning capacity in future. Hence, the compensation works out at Rs.1,19,539/- $(1800 \times 60/100 \times 221.37 \times 50/100)$.

9. Insofar as the interest is concerned, in view of the decision of the Apex Court in ***Saberabibi Yakubhai Shaikh and others v.***

National Insurance Company Limited and others¹ and Oriental Insurance Company Limited v. Siby George and others², the claimant deserves 12% p.a. simple interest from the date of accident till realization.

10. Accordingly, this Civil Miscellaneous Appeal is allowed and the compensation is enhanced from Rs.95,632/- to Rs.1,19,539/- with simple interest at 12% per annum from the date of accident till the realization. The respondents are directed to deposit the compensation within one month from the date of this Judgment, failing which, execution can be taken out against them. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 20.10. 2016

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¹ (2014) 2 SCC 298

² (2012) 12 SCC 540

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