

THE HON'BLE MRS JUSTICE ANIS
Cross Objections SR No.39988 of 2003
IN/ AND
C.M.A. NO.830 OF 2003

JUDGMENT:

This appeal is filed by the appellant/ Opposite Party No.2 under Section 30 of the Workmen Compensation Act (for short 'W.C Act'), aggrieved by the order dated 27.11.1996, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-2, Guntur in W.C. No.108 of 1995, awarding compensation of Rs.78,392/- to the respondent/ applicant. The respondent/ applicant filed Cross Objections seeking to enhance the said compensation.

2. The respondent/ applicant filed the above W.C claiming compensation of Rs.85,000/- on account of injuries sustained by him in a motor vehicle accident occurred on 02.11.1993 during the course of his employment.

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

4. The brief averments made in the petition are that the applicant was working as a driver in a lorry bearing No.AIQ 7647 of opposite party No.1, with a salary of Rs.1,300/- per month in addition to batta of Rs.300/- to Rs.400/- and opposite party No.2 is the insurer of the said lorry. On 02.11.1993 at about 1.30 pm, while the applicant driving the lorry from Yandrapalli side and when he reached near Rallavagu, dashed against the lorry bearing No.AP 11T 216 which was coming from opposite direction, as a result of which, the applicant sustained grievous injuries to his right knee joint. He was admitted in Government Hospital, Yarraguntapalem and thereafter, shifted to a private nursing home by name Sai Priya Hospital of Dr.K.Uma Maheswara Rao, at Guntur, where he underwent treatment as an inpatient for 20 days. The applicant stated that he was unable to do any work as such he filed the present W.C claiming compensation of Rs.85,000/- from the opposite party Nos.1 and

2.

5. Opposite Party No.1 called absent on 10.04.1995 and remained exparte.

6. The Opposite Party No.2 put the applicant to prove the manner of accident, the age and income of the applicant and however contended that the petition is not maintainable under law and finally stated that the compensation awarded by the Assistant Commissioner of Labour-II, Guntur, is high and excessive, and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Assistant Commissioner of Labour-II, Guntur, framed six issues. To substantiate his claim, on behalf of the applicant, Dr.P.Ramachandra Rao was examined as AW.1 and Sk.Meerza was examined as AW.2 and Exs.A1 to A10 were marked. On behalf of the contesting opposite parties, no oral or documentary evidence was adduced.

8. After considering the oral and documentary evidence, the Assistant Commissioner of Labour-II, Guntur, granted compensation of Rs.78,392/- with interest at 6% per annum, by order dated 27.11.1996. Aggrieved by the said order, the Insurance Company filed the instant appeal.

9. Learned counsel for the appellant/ Opposite Party No.2 argued that the Assistant Commissioner of Labour-II, Guntur, without considering the evidence of AW.1 granted compensation on the ground that the applicant suffered 100% disability and that the Assistant Commissioner also has not considered the correct age of the applicant and finally prayed the Court to reduce the compensation.

10. On the otherhand, learned counsel for respondent/ applicant argued that after considering the oral and documentary evidence, the Assistant Commissioner of Labour-II, Guntur, granted just and

reasonable compensation but that compensation also has to be enhanced as the applicant filed cross objections on the ground that he is earning monthly income of Rs.1,600/- but not Rs.1,300/- as concluded by the Assistant Commissioner of Labour-II, Guntur while passing the order under appeal.

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

1. Whether the compensation awarded by the Assistant Commissioner of Labour-II, Guntur is just and reasonable?
2. Whether the applicant/ Opposite Party No.2 is entitled for reduction of compensation as prayed for?

12. **POINTS:**

There is no dispute that the applicant was working as a driver of lorry bearing No.AIQ 7647 belonging to opposite party No.1, as on the date of accident and thus he was under the employment of the opposite party No.1 and the accident occurred during the course of employment. It is also not in dispute that after the accident, the Police Yarrguntapalem registered a case in Crime No.45 of 2003.

13. The Assistant Commissioner of Labour-II, Guntur, after considering the evidence of AW.1—Dr P.Ramachandra Rao, who issued the disability certificate and taking into consideration the fact that though the applicant sustained 50% disability, his right leg was shortened and he is unable to do his previous employment for future income, has assessed the loss of earning capacity of the applicant at 100% and accordingly granted Rs.78,235 /- as compensation.

14. There is no doubt that the applicant sustained grievous injuries in the accident and his leg was shortened, due to which he cannot work as driver. Therefore, the Assistant Commissioner for Labour-II, Guntur, rightly granted the compensation of Rs.78,235/- to

which the applicant is entitled to.

15. Coming to the contention of the respondent/ applicant that the Assistant Commissioner of Labour-II, has restricted the monthly income of the applicant to Rs.1,000/- instead of taking Rs.1,600/- per month. Neither the applicant nor the owner produced any evidence much less documentary evidence to show the applicant's monthly earnings. Therefore, considering the evidence of Aws.1 and 2 and the documentary evidence available on record, rightly took the wages fixed to Heavy Goods Vehicle driver as per the relevant G.O prevails at that time and arrived at just and reasonable compensation, which needs no interference.

16. In view of the above discussion, the appeal is dismissed confirming the award passed by the Assistant Commissioner of Labour-II, Guntur. Consequently, the Cross Objections filed by the respondent/ applicant is dismissed. There shall be no order as to costs.

17. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

Date:17.03.2016
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THE HON'BLE MRS JUSTICE ANIS

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