

**HON'BLE SMT JUSTICE ANIS**

**CMA No. 338 OF 2004**

**JUDGMENT:**

This appeal is filed by the appellant-Insurance Company under Section 30(a) of Workmen's Compensation Act, 1923 (for short 'the Act'), aggrieved by the orders dated 6.12.2003, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, at Anjaiah Karmika Sankshema Bhavan, RTC Cross Road at Hyderabad in W.C.Case No. 72 of 2003, awarding compensation of Rs.3,67,296/-.

2. The claimant filed the above W.C. under Section 22 of Workmen's Compensation Act, 1923, claiming compensation of Rs. 5,00,000/- on account of injuries sustained by him on 29.5.2003 in an accident occurred during the course of his employment.

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

4. The brief averments made in the petition are that the applicant filed the claim application for the personal injuries sustained by him on 29.5.2003 in an accident during the course of his employment with the first opposite party as an Auto driver in an auto bearing No. AP-11-W-2487, while he was proceeding on the said auto from Santoshnagar towards

Champapet and on reaching near Champapet Cross Roads, a tipper bearing No. AEK 8322, which was proceeding to L.B.Nagar from Chandrayanagutta, dashed against his auto and the applicant sustained grievous fracture injuries. He was shifted to Osmania General Hospital, Hyderabad for treatment and was admitted as an inpatient and due to the injuries the applicant got permanent and total disability. The Police at Saroornagar Police Station registered a case in Crime No. 399 of 2003 under Section 337 of IPC. According to the applicant, he is totally dependent upon his earnings as an auto driver under the employment of the first opposite party for his livelihood and his family with no other source of income and he was paid Rs. 4,000/- per month as wages by the first opposite party and he was aged about 25 years at the time of accident. The first opposite party was aware of the accident and visited the place of the accident and also visited the injured workman in the hospital. The applicant stated that he is a workman within the meaning of Section 2 (n) of the Act and the auto bearing No. AP-11-W-2487 was insured with the 2<sup>nd</sup> opposite party, which was valid from 16.11.2002 to 15.11.2003, therefore, he claimed a compensation of Rs. 5,00,000/- against both the opposite parties 1 & 2.

5. First opposite party remained ex-parte and second opposite party filed counter affidavit denying the averments in the petition and denied about the involvement of the applicant in the accident and injuries received by him and put the applicant to prove the nature of the injuries and the manner in

which the accident occurred. According to the second opposite party, the first opposite party has not reported the accident to the second opposite party in collusion with the applicant with a view to cause loss to the 2<sup>nd</sup> opposite party and stated that they are aware of the criminal proceedings lodged by the police and therefore, the 2<sup>nd</sup> opposite party is not liable to pay compensation.

6. During the course of enquiry, the applicant himself examined as AW-1 and also got examined the Doctor as AW-2 and Exs. A1 to A8 were marked. On behalf of first opposite party none were examined and no documents were marked. On behalf of second opposite party none were examined but Ex. D1 Insurance Policy was marked.

7. After considering the evidence on record, the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad awarded compensation at Rs. 3,66,062/- by taking total wages of the applicant at Rs. 2,834/- by assessing the loss of earning capacity of the applicant at 100%. Aggrieved by the same, the Insurance Company filed the present appeal.

8. The main contention of the learned counsel appearing for the appellant is that though the doctor in his report stated that the respondent/applicant suffered physical disability at 40% but strenuously the Commissioner for Workmen's Compensation awarded compensation by assessing the loss of earning capacity of the applicant at 100%, therefore, that finding of the

Commissioner is to be set aside.

9. On the other hand, learned counsel appearing for the respondent/applicant argued that though the doctor estimated physical disability at 40%, the respondent/applicant received grievous injuries and is unable to do his work as an auto driver; therefore, the finding of the Commissioner for Workmen's Compensation needs no interference.

10. Having regard to the submissions made by the learned counsel appearing for both sides now the point that arises for consideration is:

*“Whether the appellant/Insurance Company is entitled for reduction of compensation awarded by the Commissioner for Workmen's Compensation basing on the disability certificate issued by AW-2?”*

11. **POINT:** It is not in dispute that after considering the evidence of AW-1 and AW-2, the Commissioner for Workmen's Compensation awarded Rs. 3, 67,296/- as compensation to the respondent/applicant, who sustained two injuries in the accident occurred on 29.5.2003. The respondent/applicant in his evidence categorically stated that due to the accident he is unable to do any work and he lost his employment. Respondent/applicant also examined AW-2, Civil Surgeon, Specialist in Orthopaedics in Golconda Area Hospital, who issued the disability certificate stating that the applicant suffered with shortening of leg and permanent disability of 40% with

interlocking of nails within the limbs and it will not be possible for the applicant to drive a vehicle in future. Regarding the disability suffered by the applicant is concerned, AW-2, Civil Surgeon estimated the permanent disability at 40% with interlocking of nails within the limbs and assessed the loss of earning capacity of the applicant at 100% on the ground that the applicant is not in a position to drive the vehicle in future.

12. After hearing the arguments of both sides and also taking into consideration the disability and loss of earning capacity of the applicant, the loss of earning capacity as assessed by the Commissioner can be reduced from 100% to 75%. Thus the amount of compensation entitled to by the applicant comes to Rs. 2,74,546/- ( $\text{Rs. } 2834 \times 60/100 = 1700.4 \times 75/100 = 1,275.30 \times 215.28 = 2,74,546/-$ ).

13. Accordingly, this Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Commissioner for Workmen's Compensation is reduced from 3,66,062/- to 2,74,546/- (Rupees Two Lakhs Seventy Four Thousand Five Hundred Forty Six Only). The rate of interest i.e, 9% per annum as awarded by the Commissioner for Workmen's Compensation holds good. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

**ANIS, J**

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Date: 05.08.2016

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