

SMT JUSTICE ANIS
CIVIL MISCELLANEOUS APPEAL No.1471 of 2004

JUDGMENT:

This appeal is filed by the appellant-claimant under Section 30 of the Workmen's Compensation Act, 1923 (for short, 'the Act') aggrieved by the order dated 25.03.2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad (for short, 'the Commissioner for Workmen's Compensation') in W.C.No.184 of 2003 awarding compensation of Rs.97,796/-.

2. The appellant-claimant filed the above Workmen's Compensation case under Section 22 of the Act claiming compensation of Rs.4,00,000/- on account of the personal injuries sustained by him in an accident that occurred on 18.04.2002.

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

4. The appellant herein, who is the applicant before the Commissioner for Workmen's Compensation, filed an application under Section 22 of the Act against the Opposite Parties claiming compensation of Rs.4,00,000/- for the personal injuries sustained by him during the course of employment under the Opposite Party No.1. The applicant was working as labourer on Lorry bearing registration No.AHT

9828 under the control of Opposite Party No.1 and drawing a salary of Rs.4,000/- per month. On 18.04.2002 at about 11.30 A.M., while he was travelling in the Lorry during the course of employment and when the Lorry reached Madhapur village turning, the driver of Lorry drove the vehicle in a rash and negligent manner at high speed and lost control over the Lorry and gave dash to a cyclist from backside, who was proceeding towards Bonkanpalli side on his cycle, and turned turtle. As a result, the applicant sustained fracture to right wrist of colles, fracture to clavicle, head injury and multiple and grievous injuries on various parts of the body. The Police, Makloor registered a case in F.I.R. No.54/2002 dated 18.04.2002 under Section 337 I.P.C. against the driver of Lorry. Therefore, the applicant prayed the Commissioner for Workmen's Compensation to grant compensation of Rs.4,00,000/- for the injuries sustained by him during the course of employment under the Opposite Party No.1.

5. Opposite Party No.1 filed a counter, wherein he admitted the applicant's employment, salary and accident and also stated that since the vehicle was insured with Opposite Party No.2 and was having valid insurance policy as on the date of accident, Opposite Party No.2 alone is liable to pay the compensation.

6. Opposite Party No.2 filed the counter and denied all the material allegations made in the application, filed by the applicant, and put the applicant to prove the manner of accident, age and income of the applicant and the injuries received by him and the treatment taken by him and finally prayed the Commissioner for Workmen's Compensation to dismiss the application.

7. Basing on the pleadings, the Commissioner for Workmen's Compensation framed two issues, and to substantiate the claim, the applicant examined himself as PW.1 and also got examined Dr. T.Narsing Rao as PW.2 and got marked exhibits A1 to A6. Opposite Party No.1 was examined as RW1 and no oral evidence was adduced by the Opposite Party No.2.

8. After considering the oral and documentary evidence, the Commissioner for Workmen's Compensation has awarded a compensation of Rs.97,796/- to the applicant.

9. Being not satisfied with the said compensation, the applicant filed the present appeal.

10. Learned counsel for the appellant-applicant argued that the Commissioner for Workmen's Compensation has granted a meagre compensation without considering the oral and documentary evidence and that he has no power to reduce the

wages given by the Opposite Party No.1, and therefore prayed the Court to enhance the compensation.

11. On the other hand, learned counsel for the Insurance Company-respondent No.2 argued that the appellant has not filed proper evidence, as he was admitted in the Government Hospital and the record of the Government Hospital was not produced. It is further argued that PW.2, who treated the appellant, has issued a disability certificate, but he is not competent to issue such certificate, as the appellant took the treatment in the Government Hospital and the certificate should have been issued by the Medical Board where the appellant has taken treatment. The Commissioner for Workmen's Compensation after considering the oral and documentary evidence rightly granted reasonable compensation and therefore, the said finding needs no interference and prayed the Court to dismiss the appeal with costs.

12. 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 Commissioner for Workmen's Compensation is just and reasonable?
2. Whether the appellant-applicant is entitled for enhancement of compensation as prayed for?

13. **POINTS:** A perusal of the evidence of PW.1 and exhibits A.1 and A.2 and also the admissions in the counter of Opposite Party No.1 shows that there is no dispute that the accident occurred on 18.04.2002 due to rash and negligent driving of the driver of Lorry bearing registration No.AHT 9828, in which the applicant sustained injuries and also suffered disability. According to the Opposite Party No.1, the applicant was working as labourer with Opposite Party No1, who is the owner of vehicle bearing registration No.AHT 9828 and the applicant, who was working as labourer, received injuries during the course of employment caused by the driver of Opposite Party No.1. PW.1 in his evidence narrated the manner of accident and there is no contra evidence produced by the Opposite Party No.2 to disprove the manner of accident. Therefore, the finding of Commissioner for Workmen's Compensation regarding the manner of accident, in which the applicant received injuries during the course of employment, needs no interference. According to the applicant, immediately after the accident he was shifted to the Government Headquarters Hospital, Nizamabad, and thereafter he took treatment in private hospitals. In the evidence of applicant, he stated that he received injuries to right wrist of colles, fracture to clavicle, head injury and multiple and grievous injuries on various parts of the body and filed Ex.A3-Injury Certificate and Ex.A4-Disability

Certificate. PW.2-Doctor treated the petitioner and gave follow up treatment and assessed the disability at 30% permanent partial disability and loss of earning capacity at 40%. RW.1, who is the owner of vehicle, admitted in her evidence that she engaged the applicant for work on her vehicle and stated that she used to pay Rs.4,000/- per month as salary. She also stated about the injuries received by the applicant during the course of employment and further stated that the Insurance Policy was in force with Opposite Party No.2, as such the Opposite Party No.2 is liable to pay compensation to the applicant. Though the Opposite Party No.2 denied the accident and also the relationship of employee and employer between the applicant and Opposite Party No.1, but no contra evidence was produced by the Opposite Party No.2. Therefore, the Commissioner for Workmen's Compensation has rightly held that the applicant was employee of the Opposite Party No.1 as a labourer and he suffered permanent partial disability. As per the evidence of PW.1 and Ex.A3-Injury Certificate, the age of applicant is 18 years at the time of accident. Considering the evidence of PW.2 regarding 30% permanent partial disability suffered by the applicant, the Commissioner for Workmen's Compensation has rightly taken the disability as 30% and loss of earning capacity as 40% and fixed the wages of applicant as Rs.1,800/- per month.

14. Learned counsel for the appellant contended that the observation of Commissioner for Workmen's Compensation taking the monthly wages of applicant as Rs.1,800/- is very low, though the prevailing rate of income of a workmen is more than Rs.2,500/- per month and therefore, the monthly wages of applicant has to be enhanced.

15. It is pertinent to note that the Workmen's Compensation Act is a beneficial piece of legislation conceived in the interest of the workmen, who are the victims of accidents arising out of and in the course of employment and the Act provides for cheaper and quicker disposal relating to compensation through Special Tribunals.

16. Though the applicant claimed Rs.4,000/- per month as income, RW.1 has not produced any record to prove that she paid Rs.4,000/- per month except issuing Ex.A5-Salary Certificate. No corresponding record has been produced to show that the entries in Ex.A5 are true and genuine. In a similar situation, this Court has fixed the wages of labourer as Rs.2,500/- per month. Therefore, the monthly wages of applicant can be taken as Rs.2,500/-. The age of applicant, loss of earning capacity and relevant age factor were rightly taken by the Commissioner for Workmen's Compensation. In view of the above, the appellant is entitled to the following amount of compensation:

Monthly wages of the appellant	Rs.2,500/-
Age of the appellant	18 years
Loss of earning capacity	40%
Relevant age factor	226.38
Compensation	60% of the wages X relevant age factor X loss of earning capacity = $2500 \times 60 / 100 \times 226.38 \times 40 / 100 =$ Rs.1,35,828/-

In the result, the appeal is partly allowed by enhancing the compensation awarded by the Commissioner for Workmen's Compensation to the appellant-claimant from Rs.97,796/- to Rs.1,35,828/- (Rupees One lakh thirty five thousand eight hundred and twenty eight only) with interest at the rate of 12% per annum from the date of application till realization. No order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

ANIS, J

02.12.2016
MVA