

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.3496 OF 2003

Dated 9-2-2016

Between:

K.Uma Maheswara Achari.

..Appellant.

And:

C.D.Ratnakar Rao and another.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.3496 OF 2003

JUDGMENT:

This appeal is preferred challenging order dated 31-12-2002 in W.C.No.55 of 2000 on the file of Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour, Circle-II, Visakhapatnam.

Appellant herein filed application before the Commissioner for Workmen Compensation claiming compensation of Rs.1,00,000/- along with medical expenses of Rs.30,000/- for the injuries sustained by him during the course of his employment on 11-11-1998.

Appellant contended that he was appointed as daily wage worker on 15-9-1998 and during the course of his employment, he met with an accident and sustained 40% disability and that he took treatment with a reputed orthopedic doctor by name Satish Kumar at Kamala Nursing Home, Gajuwaka and incurred expenses of Rs.30,000/-. It is further contended that because of disability, he is also entitled for compensation of Rs.1,00,000/-.

Lower authority on a consideration of oral and documentary evidence, granted a sum of Rs.32,106/- as compensation for the injuries and rejected the claim of appellant for the medical expenses as it is not provided

under the Act. Aggrieved by the quantum, appellant preferred present appeal.

Heard arguments.

Advocate for appellant submitted that a sum of Rs.32,106/- granted towards compensation is very low for 40% disability. He further submitted that the lower authority erred in denying medical expenses to the appellant. He further submitted that the lower authority erred in taking Rs.87.50ps per day as wages as against the claim of Rs.100/- per day and for these reasons, order of lower authority has to be modified and compensation has to be enhanced.

Other side supported the order of lower authority and contended that Commissioner for Workmen has rightly fixed the compensation and there are no grounds to interfere.

Now the point that would arise for my consideration in this appeal is whether the award dated 31-12-2002 is legal and correct or there are any grounds to interfere with the same?

POINT:

There is no dispute with regard to relationship of employee and employer between appellant and respondent. It is also not in dispute that appellant was working as daily wage worker in the establishment of respondent. It is also not in dispute that appellant sustained injury during course of his employment. The claimant who is examined as P.W.1 has reiterated his claim and deposed that he took treatment at Kamala Nursing Home and thereafter, in Simhagiri Hospital and that the doctors assessed disability at 40%. Medical Officer of King George Hospital, Visakhapatnam who examined the applicant is examined as P.W.2 and his evidence is supported and corroborated with the version of appellant in respect of injuries. As against this, management examined two witnesses as R.W.1 and

R.W.2 and produced documentary evidence with regard to wages. The main grievance of appellant is that lower authority erred in taking Rs.87.50ps per day as wages when the claim of appellant is for Rs.100/-. Learned advocate for appellant submitted that the claimant has clearly deposed in his evidence that he is getting a sum of Rs.100/- per day as wages but the lower authority without any valid reasons discarded the claim of appellant for Rs.100/-per day.

As seen from the evidence, respondents herein has produced Ex.B.6 which is the minutes recorded by Labour Enforcement Officer (Central), Visakhapatnam. As seen from Ex.B.6, appellant herein has submitted representation to the Labour Enforcement Officer (Central), Visakhapatnam, on which L.E.O. conducted enquiry and during that enquiry, minutes were recorded which disclose that the management paid wages to the appellant herein at the rate of Rs.87.50ps per day and considering that Ex.B.6 minutes, lower authority has calculated compensation by taking wages at the rate of Rs.87.50ps per day, therefore, the objection of appellant that the lower authority has discarded his claim of Rs.100/- per day without any material is not at all correct. On the other hand, lower authority has rightly fixed the daily wage of Rs.87.50ps which is evident from Ex.B.6 document. Therefore, the objection of appellant with regard to rate of wages is not at all tenable.

The next objection of appellant is that lower authority has not granted any amount towards medical expenses though the appellant has established that he incurred a sum of Rs.30,000/- towards medical charges.

As seen from the award, lower authority has refused the medical expenses as there is no provision in the Act to grant medical expenses.

Advocate for appellant submitted that in view of Section 4 (2) (A) of Workmen Compensation Act,

appellant is entitled for medical expenses.

As seen from the provision relied on by advocate for appellant, this provision was inserted by way of amendment in the year 2009 and that provision has come into force from 18-1-2010. There is no mention in the Act that it would have retrospective effect. Admittedly, by the date of accident, so also, by the date of award, this provision is not in the statute book and when there is no retrospective effect to the amended provision and particularly when the Act contemplated that the provision, shall have effect from 18-1-2010, amended provision cannot be extended to the appellant, therefore, the claim of appellant towards medical expenses is rightly refused by lower authority and I do not find any wrong in the order of the lower authority.

On a scrutiny of material, I am of the considered view that there are no grounds to interfere with the award passed by lower authority and that the appeal is devoid of merits.

Accordingly, this C.M.A. is dismissed. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 9-2-2016.
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs