

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.133 of 2008

JUDGMENT:

This appeal is preferred questioning order dated 02.11.2007 in W.C.No.31 of 2006 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ongole (for short, 'the lower Authority').

2. Appellant herein is applicant before the lower Authority, who submitted application claiming compensation of Rs.3,00,000/- for the injuries sustained during the course of employment on 03.05.2006. According to appellant, on the date of incident, he was a cleaner on lorry bearing No.AP 27/V 1448, and the said vehicle met with accident due to the rash and negligent driving of the driver, which dashed against a stationed tractor near Mandapalli stage on Rajiv High Way and he received fracture to his right hand, injury below the knee, injury on the right leg besides other injuries on all parts of the body. He contended that he was admitted in Siddartha Hospital, Siddipet, and treated for two days and he was shifted to Vijaya Hospital, Ongole, where operation was conducted and implants were fixed on 06.05.2006. He contended that he was in the hospital for 14 days and due to the accident he lost his livelihood. He further contended that he was getting a monthly income of Rs.2,500/- towards salary and bata of Rs.500/- and he spent

nearly Rs.50,000/- towards treatment and that he is entitled for compensation of Rs.3,00,000/-. He was examined as AW.1 and through him four documents are marked. The lower Authority recorded that applicant received injuries due to the accident during course of his employment, but recorded as the applicant failed to prove that he sustained disability and also not examined the Medical Officer on these grounds, not granted any compensation and dismissed the claim on the ground it is not proved. Aggrieved by the same, present appeal is preferred.

3. Heard both sides.

4. Advocate for appellant submitted lower Authority has accepted the version of applicant that he sustained injuries during the course of employment, but not granted any compensation on the ground that the injuries and disability are not proved. He submitted that the applicant has taken steps for examination of Doctor, who treated, but could not be produced before Court and the lower Authority ought to have considered the medical certificate marked as Ex.A.3, and that order of the lower Authority is not legal.

5. On the other hand, advocate for Insurance Company submitted that when the applicant has not proved the injuries and disability, the lower Authority was right in dismissing the application.

6. Now the point that would arise for my consideration in this appeal is:

Whether the order dated 02.11.2007 in W.C.No.31 of 2006 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ongole, is legal, proper and correct?

POINT :

7. As seen from the record, there is no dispute with regard to relationship of employer and employee between the parties. The only reason for dismissal of the claim application of applicant is that Medical Officer, who issued the disability certificate, is not examined and the applicant failed to prove the disability and loss of earning capacity in order to calculate the compensation. As seen from the material, it appears that applicant has taken summons for examination of Doctor, but he has not succeeded in producing the Medical Officer. Considering the material on record, I am of the view that the lower Authority ought to have given opportunity to applicant to examine the Medical Officer in order to establish the disability and loss of earning capacity. On a scrutiny of the material, I am of the view that this is a fit case to remit back the record to lower Authority for fresh consideration by giving opportunity to both parties to adduce evidence on their side including the evidence of Medical Officer and decide the matter on merits. However, since it is an old matter, I feel that some time has to be fixed for disposal of the case.

8. For these reasons, appeal is allowed and impugned

order dated 02.11.2007 is set aside and the matter is remitted back to the lower Authority to decide the matter afresh after giving opportunity to both parties to lead evidence and dispose of the case within three months from the date of receipt of this order.

9. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

18th March 2016.

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