

SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.2117 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 17.10.2001 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.52 of 2000 awarding compensation of Rs.1,27,876/-.

2. The appellant-claimant filed the above Workmen's Compensation case under Section 22 of the Act claiming compensation of Rs.2,00,000/- on account of the personal injuries sustained by him in an accident that occurred on 19.02.1998.

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.2,00,000/- for the personal injuries sustained by him during the course of employment under the Opposite Party No.1. The applicant was working as a labourer on Lorry bearing registration

No.APT 9919 under the employment of Opposite Party No.1, who is the owner of said vehicle. On 19.02.1998, while the applicant was travelling as a labourer, along with other labourers, in the said Lorry going from Nizamabad to Varni for loading the paddy. When the Lorry reached Mallaram shivar on Nizamabad to Varni Road on the midnight of 19/20-02-1998, the driver of vehicle drove it in a rash and negligent manner and gave dash to a Car bearing registration No.ADB-2636, which was coming from opposite direction. Due to the accident, the Lorry was completely damaged and the driver of Car received bleeding injuries and died. The applicant received fracture on ribs and other grievous injuries on other parts of the body. Immediately he was shifted to the Nizamabad Orthopaedic Hospital, Nizamabad, for taking treatment and from there he was shifted to Hyderabad for further treatment. According to the applicant, he spent an amount of Rs.1,00,000/- towards medical treatment. He was working as a labourer and was drawing a salary of Rs.2,300/- per month and Rs.50/- per day as Batta. The applicant further stated that due to injuries he became permanent disabled person and lost his job and that the accident was occurred during the course of employment under the Opposite Party No.1. It is further stated that the Opposite Party No.1 insured his vehicle with Opposite Party No.2 and hence, both the Opposite Parties 1 and 2 are jointly and severally liable to

pay compensation to the applicant, who was aged 26 years at the time of accident.

5. Opposite Party No.1 filed the counter stating that he is paying the salary of Rs.2,000/- per month to the applicant besides Batta of Rs.20/- per day and further admitted that the applicant was sustained injuries while discharging his duties as a labourer, and prayed the Commissioner for Workmen's Compensation to dismiss the application against the Opposite Party No.1, as the vehicle was insured with Opposite Party No.2.

6. Opposite Party No.2 filed the counter and denied all the material allegations mentioned in the application, filed by the applicant, and put the applicant to prove the manner of accident, age and income of the applicant, 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 A14. The Assistant Administrative Officer of the Insurance Company was examined as RW.1 and got marked the Insurance Policy as Ex.B.1.

8. After considering the oral and documentary evidence, the Commissioner for Workmen's Compensation has awarded a compensation of Rs.1,27,876/- to the applicant against the Opposite Parties 1 and 2.

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 shows that on 19.02.1998, on the instructions of the Opposite Party No.1 while the applicant was travelling as labourer on Lorry bearing registration No.APT-9919 for loading the paddy from Nizamabad towards Varni, when the Lorry reached near Mallaram shivar on Nizamabd to Varni road in the intervening night of 19/20-02-1998, the driver of Lorry drove the vehicle at high speed in a rash and negligent manner and dashed against a Car bearing registration No.ADB-2636, which was coming in opposite direction. Due to the accident, the applicant and other labourers sustained grievous injuries. Immediately the applicant was shifted to the Nizam Orthopaedic Hospital, Nizamabad, and from there he was referred to Hyderabad for better treatment. PW.1 also stated that the Police, Nizamabad Rural, registered a case in Cr.No.25/1998 dated 20.02.1998

under Section 304-A I.P.C. against the driver of vehicle. It was further stated that he spent an amount of Rs.1,20,000/- towards medicine and extra nourishment. He also stated that the Opposite Party No.1 used to pay him the salary of Rs.2,300/- per month and also Rs.50/- per day as Batta and he was aged 19 years at the time of accident.

14. To support the evidence of PW.1, Dr. T.Narsing Rao, who is working in the Government Headquarters Hospital, Nizamabad, was examined as PW.2. According to him, he examined the applicant and found malunited fracture of 4th, 5th, 6th and 7th ribs right. He opined that the applicant suffered 55% partial permanent and functional disability and loss of earning capacity as 55%. He also stated that the applicant cannot work as labourer and issued Ex.A2-Injury Certificate.

15. To disprove the evidence of PWs.1 and 2, R.W.1, who was working as the Assistant Administrative Officer with Opposite Party No.2, was examined and stated that their Company conducted investigation, which was revealed that the vehicle was not at all met with an accident, but it was implicated by the applicant in collusion with Opposite Party No.1 for the purpose of compensation.

16. 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.

17. 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.

18. From the perusal of the Injury Certificate, it is evident that in the accident, the applicant sustained grievous as well as simple injuries. PW.2-Doctor examined the applicant and found malunited fracture of 4th, 5th, 6th and 7th ribs and he gave opinion that the applicant suffered 55% partial permanent and functional disability. Considering the evidence of PWs.1 and 2 and RW.1, the Commissioner for Workmen's Compensation rightly fixed the disability of applicant as 55% and fixed the wages @ Rs.1,800/- per month. According to the applicant, he was receiving the wages @ Rs.2,300/- per month along with Batta @ Rs.50/- per day. The said earnings show that nearly the applicant is receiving Rs.3,800/- per month.

There is no contra evidence produced by the Opposite Parties 1 and 2. Considering the evidence of PW1, the wages can be fixed at Rs.2,500/- per month prevailing during the course of time. The age of applicant and the disability 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	26 years
Disability	55%
Relevant age factor	215.28
Compensation	60% of wages X relevant age factor X percentage of disability = 2500X60/100 X 215.28 X 55/100 = Rs.1,77,606/-

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.1,27,876/- to Rs.1,77,606/- (Rupees One lakh seventy seven thousand six hundred and six 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