

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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C.M.A. Nos.1862 and 2789 of 2004

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COMMON JUDGMENT:

These two appeals are being disposed of by this common order as they arise out of the same award in W.C.No.18 of 1999 passed by the Commissioner for Workmens' Compensation and Assistant Commissioner of Labour, Nizamabad.

C.M.A. No.1862 of 2004 was filed by the injured cleaner seeking the enhancement of compensation whereas C.M.A.No.2789 of 2004 was filed by opposite party No.2-Insurance Company challenging the quantum of compensation.

The applicant in W.C. No.18 of 1999 filed the application alleging that he was a cleaner working under respondent No.1 in a lorry bearing registration No.AP 25T 5826 on a monthly salary of Rs.2,000/-. On 21.01.1998, when he along with the driver of lorry taken the goods in the said lorry from Kamareddy to Nizamabad and when it passed the place of Degree College, the driver of lorry asked the applicant to check the lorry and when he was checking the lorry, the driver of lorry drove it without intimation, so the lorry went on his feet. In the said accident, his feet was crushed. He sought payment of compensation of Rs.2,00,000/-.

Though opposite party No.1-owner of lorry engaged an advocate, he did not file counter. Respondent No.2 filed a counter.

On the basis of the application and counter, the following issues were framed by the Commissioner.

- 1) Whether the Applicant is a workman within the meaning of the Act and whether the accident occurred during the course of employment under Opposite Party No.1?
- 2) If so, to what relief the Applicant is entitled and against which of the Opposite Parties?

The applicant was examined as PW1 and examined one Dr. L.Ramulu as PW2 and exhibits A1 to A7 were marked on behalf of the applicant. Except marking the Xerox copy of insurance policy as Ex.B.1, the respondents did not adduce any oral or documentary evidence.

During the evidence of PW1, it came to light that immediately after the accident the injured was shifted to Government Hospital, Kamareddy, and thereafter he was admitted in Jeevandana Hospital, Kamareddy. Later, he was admitted in Sri Sai Thirumala Orthopaedic and Surgical Hospital, Nizamabad and one Dr. R.Bhoopathi Reddy treated him and his foot was amputated. The accident occurred during the course of employment. The Commissioner of Workmens' Compensation came to the conclusion that the applicant was working as a cleaner and he suffered permanent partial disability in the accident arose during the course of employment. He took the monthly wages as Rs.1,800/- and considering the age of the applicant as 41 years, his loss of earning capacity was assessed at 55% and by applying the relevant age factor of '181.37', the compensation was calculated at Rs.1,07,734/- and awarded, by order dated 12.05.2004.

As stated above, seeking enhancement of the said amount the injured filed the appeal, and challenging the said quantum the Insurance Company also filed the appeal.

This Court noticed that the Commissioner of Workmens' Compensation, on the basis of evidence, held that the accident arose during the course of employment. Though the applicant claimed monthly wages at Rs.2,000/-, the Commissioner took the monthly wages as Rs.1,800/-. In the present appeal preferred by

the Insurance Company, it is contended by them that the monthly wages are not more than Rs.1,300/- as per the minimum wages prevailing as on the date of accident, but no evidence was let in before the Commissioner.

In the circumstances, the calculation made by the Commissioner determining the compensation is proper. Though the Insurance Company preferred the appeal challenging the percentage of loss of earning capacity, since the Commissioner assessed the loss of earning capacity based on the injuries sustained by the applicant, this Court is not inclined to vary the said percentage.

In view of the proper calculation made by the Commissioner, the amount awarded is correct and it does not warrant any interference. In view of the same, both the appeals are dismissed. No order as to costs.

Miscellaneous Petitions, if any, pending in these Appeals shall stand closed.

A.RAMALINGESWARA RAO, J

10.02.2016

MVA