

HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.4166 of 2004

J U D G M E N T:

This appeal is filed by the appellant herein/opposite party No.2 under Section 30 of Workmen's Compensation Act, 1923 (for short 'the Act'), aggrieved by the order dated 11.08.2004, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-I, in W.C.No.29 of 2004, awarding compensation of Rs.2,77,002/-.

2. Respondent No.1 herein/applicant filed the above W.C claiming compensation of Rs.3,00,000/-, on account of the injuries received by him on 28.01.2004 in a motor vehicle accident that occurred during the course of employment under respondent No.2 herein/opposite party No.1.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the W.C.

4. The brief averments made in the petition are that the applicant was working as a Car driver with opposite party No.1 on his Car bearing No.AP.9AJ.8829 for the last six months prior to the date of accident. On 28.01.2004, the applicant-driver along with owner and other persons started from Jagtial to go to Jamikunta and after attending marriage while returning to Jagtial at about 04:00 p.m near Tadikal village, under the limits of Keshava patnam, suddenly a

buffalo came in opposite direction to the Car and while avoiding the accident with buffalo he suddenly lost the control and dashed to a road side tree, due to which he sustained grievous injuries to nose, nose bone fracture and leg bone fracture. Immediately after the accident, he was shifted to Government Area Hospital, Karimnagar, where he was advised to go to Hyderabad and immediately, he was shifted to Hyderabad to a private hospital and he was admitted for five days from 29.01.2004 to 04.02.2004. The police, Keshavapatnam registered a case in Cr.No.12 of 2004 for the offence punishable under Section 337 I.P.C. Further, according to the applicant, he was paid wages of Rs.3,000/- per month and Rs.50/- per day as batta and he was aged 48 years at the time of accident. The opposite party No.1 has insured his vehicle with opposite party No.2. He further stated that he received injuries in an accident that arose out of and during the course of his employment under opposite party No.1. Therefore, the applicant prayed the Court for grant of compensation of Rs.3,00,000/-.

5. Opposite party No.1 filed the counter and admitted about the employment of the applicant by him as driver on his Car bearing No.AP.9AJ.8829 and further admitted about the accident and receiving injuries by the applicant. Opposite party No.1 also admitted that the applicant was paid Rs.3,000/- p.m as wages and a case was registered as

Cr.No.12/2004 by Keshavapatnam Police and finally stated that the compensation claimed by the applicant is high and excessive and prayed the Court to dismiss the petition.

6. Opposite party No.2 filed the counter and denied the employment of the applicant with opposite party No.1 as a driver on his car bearing No.AP.9AJ.8829 and further stated that the applicant has not pursued grievous injuries and he is not getting salary of Rs.3,000./- p.m from opposite party No.1. It is also contended that the amount of compensation claimed by the applicant is high and excessive and finally stated that the applicant is not entitled for compensation and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-I has framed three issues. During the course of enquiry, the applicant was examined as AW.1 and got examined the doctor as AW.2. He also got marked Exs.A1 to A10 to prove his case. On behalf of the opposite parties, no oral evidence was adduced but Ex.B1 got marked. The Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-I, after considering the evidence of AWs.1 & 2 and Exs.A1 to A10 held that the applicant received injuries in an accident occurred during the course of employment under opposite party No.1 and awarded

Rs.2,77,002/- as compensation. Aggrieved by the said order passed, the Insurance Company filed the present appeal.

8. The learned counsel for the appellant/Insurance Company argued that Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-I, without considering the disability certificate gave 100% disability to the applicant though the disability certificate shows that he suffered disability of 50% and therefore, the applicant is not entitled for disability of 100%. Further, it is also contended that the compensation awarded by the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Hyderabad-I is high and excessive and prayed the Court to reduce the same.

9. On the other hand, the learned counsel appearing for respondent No.1/applicant argued that the Tribunal has rightly considered the evidence of the applicant and awarded a reasonable compensation and therefore the findings of the Commissioner for Workmen's Compensation needs no interference and prayed the Court to dismiss the appeal.

10. Having regard to the submissions made by the learned counsel appearing for both the parties, the point which is to be decided in this appeal is whether the appellant/Insurance Company has made out any case to set aside the order passed by the Commissioner for Workmen's Compensation as prayed for?

11. **P O I N T:** As per the admission made by opposite party No.1 in the counter, there is no dispute that the applicant is working as a driver under him and was earning Rs.3,000/- p.m as wages prior to the date of accident. He was driving the vehicle when the accident occurred. Police, Keshavapatnam registered a case in Cr.No.12 of 2004 for the offence punishable under Section 337 I.P.C. The learned Commissioner for Workmen's Compensation after considering the evidence available on record awarded compensation of Rs.2,77,002/- to the applicant. There is no dispute that the accident occurred during the course of employment and the applicant received injuries. As per the evidence of AW.1, the applicant received fracture right of right acetabulum, Bi mallular fracture of right ankle joint and fracture of nasal bones, for which he was operated in KIMS on 29.01.2004. There is no dispute that there is a valid insurance of the vehicle with opposite party No.2 covering the risk of the driver. Further, the applicant received grievous injuries and as per the disability certificate Ex.A1, he was suffering with disability of 50%.

12. The main contention of the applicant is that he is a driver and he cannot drive any Car, as such he lost his empowerment and therefore, the Commissioner for Workmen's Compensation has rightly held that the applicant suffered 100% loss of earning capacity. It is no doubt that as

per the evidence of AW.2-medical practitioner in orthopedics, it is clear that the applicant suffered fracture of right ankle joint and fracture to his nasal bone. He also stated that the applicant developed severe arthritis of right hip and right ankle with restricted movement. He had not stated that the applicant suffered the disease arthritis due to the accident. There is no basis for the lower authority to award disability of 100%. Therefore, considering the disability certificate, I am of the view that the disability suffered by the applicant shall be taken as 50% instead of 100%. A perusal of the award passed by the Commissioner for Workmen's Compensation shows that the Tribunal has rightly taken the income of the applicant as Rs.2,934/- p.m as per G.O.Ms.No.30 of LET&F department dated 01.10.2003 and further taken the multiplier as '156.47' as per Schedule IV of Section 4 of the Act. Therefore, considering all these factors and 50% disability, the applicant is entitled for Rs.1,37,725/- [2,75,450/2 being proportionate] as compensation. A perusal of the award also shows that the Commissioner for Workmen's Compensation has awarded Rs.552/- towards costs of stamps and Rs.1,000/- towards cost of Advocate fee and the applicant is entitled for the same. Therefore, the applicant is entitled for Rs.1,39,277/-. Both the opposite parties are liable to pay the compensation to the applicant. Further, in view of the amendment of the Act, the applicant is entitled for interest at 12% as per the Act from the date of

appeal till the date of realisation. On the deposit being made by the opposite parties, the applicant is permitted to withdraw the same.

13. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

14. Miscellaneous Petitions, if any, pending in this Civil Miscellaneous Appeal shall stand closed.

Date: 26.09.2016
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ANIS, J

