THE HON'BLE SMT JUSTICE ANIS

C.M.A. NO.1019 OF 2005

JUDGMENT:

The present appeal is filed by the second respondent/appellant under Section 30 of Workmen's Compensation Act, 1923 against the judgment passed in W.C.No.1 of 2005, dt.23.08.2005 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ananthapur, wherein the Commissioner made the Insurance company and also the second respondent-owner of the lorry jointly and severally liable to pay compensation of Rs.3,07,217/- along with interest at the rate of 12% per annum, from the date of accident, till the date of realization, besides stamp duty of Rs.614/-.

The brief averments made in the application are that the first respondent/applicant is the cleaner of the lorry bearing No.K.A.04-A6126 belonging to the second respondent herein. On 17.07.2004 while he was working on duty as Cleaner, the driver of the lorry drove the vehicle and when it was proceeding from Hindupur side to Bangalore, on the way near Mansandra Village at N.H.5 road, the vehicle turned turtile and the first respondent/applicant received grievous injuries and after the accident, the applicant was admitted in Dodlabalapura Government Hospital, for better treatment and he was again admitted in Government General Hospital, Anantapur for one month and he was again shifted to Government Hospital, Kurnool, wherein operation was done by inserting rods to his left leg. Thereafter, Rajannakunta police conducted enquiry and registered a case in Cr.No.68 of 2004. The first respondent/applicant is unable to do any work normally and became permanently disabled. He was earning an amount of Rs.4,500/- per month towards salary, apart from batta and he spent an amount of Rs.40,000/- towards medical expenses for the injuries sustained by him and claimed an amount of Rs.4,00,000/- towards compensation against the appellant-Insurance Company and the second respondent-owner of the vehicle.

Though notice is served on the second respondent/opposite party-1, none appeared.

The appellant-Insurance Company filed counter affidavit, denying the averments made by the first respondent/applicant and pleaded to dismiss the application.

Basing on the pleadings, the court below examined

AWs.1 and 2 and marked Exs.A-1 to A-8 on behalf of the applicant and marked Ex.B-1 on behalf of the second respondent-owner of the lorry, but no witnesses were examined.

Basing on the evidence of AW-2 Orthopedic Surgeon, Government General Hospital, Anantapur, who issued permanent disability certificate at 40%, due to post tramatic stiff left knee and shortening of left lower limb, the Commissioner determined that the disability is not 40% as mentioned by the Doctor in Ex.A-4, but it is 100% with total loss of earning capacity at 100% and thereby allowed the application, granting an amount of Rs.4,00,000/- as compensation to the first respondent/appellant, with a direction that the owner of the lorry should pay interest on compensation and not by the Insurance Company. Since the amount of compensation granted by the court below is excessive, the present appeal is filed by the Insurance Company.

The main contention of the learned counsel for the appellant is that the Tribunal awarded excess amount of compensation to the first respondent/applicant. It is also argued that the Tribunal without considering the judgment of the Apex Court awarded rate of interest at 12% p.a., on the said compensation amount and the said interest has to be reduced and finally prayed this court to allow the appeal.

On the other hand, the learned counsel for the respondent argued that the Tribunal after considering the oral and documentary evidence awarded just and reasonable compensation and the order of the Tribunal needs no interference and prayed the Court to dismiss the appeal.

Having regard to the submissions made by the learned counsel appearing for both the parties, the points which arise to be decided in this appeal are as follows:

1) Whether the appellant is liable to pay compensation to the first respondent or not?
2) Whether the appellant is entitled for reduction of rate of interest awarded by the Tribunal or not?

P O I N T S: It is no doubt true that due to the rash and negligent driving of the lorry bearing No.K.A.04-A-6126, the first respondent/applicant received grievous injuries and became permanently disabled. There is no dispute about the employer and employee relationship.

As seen from the evidence of AW-2 Orthopedic Surgeon, Anantapur, who issued permanent disability certificate to the first respondent/applicant at 40%, due to shortening If left lower limb and he needs support of walker and he will have difficulty in sitting and squatting because of the shortening of left leg and it is difficult for him to discharge his regular duties to work as Cleaner in lorry and it is a permanent disability. Basing on the evidence of AW-2, the Commissioner came to the conclusion that though the disability is 40% as mentioned by the Doctor in Ex.A-4, but loss of earning capacity of the applicant is at 100% and thereby awarded the said compensation.

In view of facts and circumstances of the case, the findings of the Commissioner needs no interference and the Commissioner rightly assessed the disability and granted compensation of Rs.3,07,217/- to the first respondent/applicant, along with interest at the rate of 12% per annum, from the date of accident, i.e., 17.07.2004 till the date of realization.

The learned counsel for the appellant contended that the Tribunal awarded interest at 12% p.a against the judgments of the Hon'ble Apex Court and prayed the Court to reduce the rate of interest at 7.5% p.a. In ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***[1], the Hon'ble Apex Court granted interest @ 7.5% p.a. In ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***[2], the Hon'ble Apex Court awarded interest at 7% p.a. Thus, in view of the different rate of interests granted by the Apex Court in the judgments cited above, I am of the considered view that the rate of interest granted by the Tribunal is excessive and therefore, it is a fit case to reduce the rate of interest from 12% to 7.5% p.a from the date of petition filed before the Tribunal till the date of realisation.

In view of the above discussion, the Appeal is allowed in part, not interfering with the compensation awarded by the Tribunal, but reducing the rate of interest from 12% to 7.5% p.a., from the date of petition filed before theTribunal, till the date of realization, payable by the owner of the vehicle and not by the appellant. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

ANIS, J

Dt.02.03.2016
TJS

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Dt.02.03.2016

[1] 2013 ACJ 2733

[2] 2012 ACJ 2328