

SMT JUSTICE ANIS
CIVIL MISCELLANEOUS APPEAL No.785 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 31.12.2003 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.136 of 2001 awarding compensation of Rs.1,06,412/-.

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 28.06.2000.

3. 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. According to the applicant, on 28.06.2000 at 8.00 p.m., while he along with other labourers were travelling in Lorry/Tipper bearing registration No.AP 25T 8811 from Armoor to Nizamabad side, when the said lorry reached near Mamidipalli village shivar,

he could not control the lorry and gave a dash to the lorry bearing registration No.AP 25T 6661 coming from Nizamabad to Armour side and also dashed against a parked lorry bearing registration No.AP 37T 1212. As a result of the accident, he received grievous fracture to right ankle, fracture to right shoulder clavicle, laceration to forehead right side and multiple and grievous injuries on various parts of the body. According to the applicant, he was earning Rs.3,000/- per month as salary from the Opposite Party No.1 and contributing the same to his family members and the applicant was working as a driver under the control of Opposite Party No.1 and sustained injuries during the course of employment and Opposite Party No.2 is the insurer of vehicle involved in the accident. According to the applicant, at the time of accident he was aged about 35 years and therefore, prayed the Commissioner for Workmen's Compensation to grant the compensation.

4. Opposite Party No.1 filed a counter and admitted that the applicant was working as a cleaner under her control on her lorry/tipper bearing registration No.AP 25T 8811 on the date of alleged accident and she used to pay Rs.3,000/- towards monthly salary to the applicant.

5. Opposite Party No.2 filed the counter and denied all the material allegations made in the application, filed by the applicant.

6. Basing on the pleadings, the Commissioner for Workmen's Compensation framed two issues, and to substantiate the claim, the applicant himself examined as PW.1 and got examined the Doctor as PW.2 and got marked exhibits A1 to A7. On behalf of the Opposite Party No.1, no oral evidence was adduced, but she filed Xerox copies of the Registration Certificate and Permit, which were marked as exhibits B.1 and B.2 respectively. On behalf of the Opposite Party No.2, the Branch Manager of Insurance Company was examined as RW.1 and got marked the Insurance Policy as Ex.B.3.

7. After considering the oral and documentary evidence, the Commissioner for Workmen's Compensation has granted Rs.1,06,412/- as compensation.

8. Being not satisfied with the said compensation, the applicant filed the present appeal.

9. 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 disability and also the wages given by the Opposite Party No.1. Learned counsel also argued that in the accident the appellant received grievous injuries and therefore, the Doctor rightly assessed the disability at 70%, but the Commissioner for Workmen's Compensation has taken only the disability at

45% and therefore, prayed the Court to enhance the compensation.

10. 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.

11. 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?

12. **P O I N T S:** A perusal of the oral and documentary evidence shows that the appellant was working as a driver with respondent No.1 herein, who is the owner of vehicle bearing registration No.AP 25T 8811. On 28.06.2000 at 8.00 p.m., as per the instructions of the owner, the appellant was driving the same vehicle with a load of sand and travelling from Armour to Nizamabad side and while driving he lost control. As a result, he gave dash to the lorry bearing registration No.AP 25T 6661 coming from Nizamabad to Armour side and also dashed against a parked lorry bearing registration No.AP 37T 1212, due to which he sustained grievous injuries and also multiple injuries and became disabled person. PW.1 is the applicant. In his evidence, he stated about the manner of accident and also filed exhibits A.1 and A.2, copies of the F.I.R. and charge sheet. There is no contra evidence produced by the Opposite Parties 1 and 2 to disprove the manner of accident. Therefore, the finding of Commissioner for Workmen's Compensation regarding the manner of accident needs no interference and further the accident occurred during the course of employment under the Opposite Party No.1. As per the evidence of PW.1, immediately after the accident he was shifted to the Government Hospital, Nizamabad and took treatment as an inpatient for nine days. Thereafter, he took treatment with private Doctors. Ex.A3 is the copy of Injury Certificate, which shows that the appellant sustained two grievous injuries and

one simply injury. According to PW.1, he approached PW.2- Consultant Orthopaedic Surgeon, Nizamabad, and got obtained Ex.A4-Disability Certificate. Admittedly, PW.2 has not issued the said certificate in his official capacity, but the certificate was issued in his private capacity. Ex.A4-Disability Certificate shows that the appellant sustained 70% partial disability and 75% loss of earning capacity. The Commissioner for Workmen's Compensation gave a finding that PW2-Doctor, who examined the appellant on 29.07.2003, has not stated what type of tests he was undertaken while issuing Disability Certificate and the said Certificate was issued two years after the accident. Though the appellant took the treatment in the Government Hospital, Nizamabad, he failed to obtain the Disability Certificate from the Medical Board, constituted in the Nizamabad Government Hospital, for the reasons best known to him. Further, a perusal of the Charge Sheet also shows that immediately after arresting the accused, he was remanded to Judicial Custody and no where it is mentioned that the applicant sustained injuries and he was referred to the Government Hospital, Nizamabad. Considering the above aspects, the Commissioner for Workmen's Compensation has rightly assessed the disability of petitioner as 45% for the purpose of compensation.

13. 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.

14. Opposite Parties 1 and 2, though filed counters, have not taken any specific plea that fraud has been played while claiming compensation and RW.1 also has not stated anything on this aspect. Learned counsel for the appellant argued that though the appellant filed Ex.A5-Salary Certificate issued by the Opposite Party No.1 stating that she was paying Rs.3,000/- per month as salary, but the Commissioner for Workmen's Compensation has taken only Rs.2,000/- as wages without any reason. Admittedly, Opposite Party No.1 has not examined in this case and RW.1 has not disputed Ex.A5-Salary Certificate. Therefore, considering the documentary evidence of PW.1 and Ex.A5-Salary Certificate, the monthly wages of applicant can be fixed at Rs.3,000/-. At the time of accident, the age of applicant was 35 years and the disability has rightly taken by the Commissioner for Workmen's Compensation at 45% and the relevant age factor is 197.06. In view of the above, the appellant is entitled to the following amount of compensation:

Monthly wages of the applicant	Rs.3,000/-
Age of the applicant	35 years
Disability	45%
Relevant age factor	197.06
Compensation	60% of the wages X relevant age factor X percentage of disability = $3000 \times 60/100 \times 197.06 \times 45/100 = 159618.60$ rounded to Rs.1,59,618/-

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.1,06,412/- to Rs.1,59,618/- (Rupees One lakh fifty nine thousand six hundred and eighteen 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

25.11.2016
MVA