

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A. No.1205 of 2005

JUDGMENT:

Aggrieved by the order dated 02.12.2005 in W.C.Case No.38 of 2004 passed by the Assistant Commissioner of Labour-II Circle, Guntur the applicant preferred the present appeal.

2) The factual matrix of the case is thus:

a) The applicant—Bathula Narayana working as Cleaner in lorry bearing No.AP 7V 4889 of Opposite Party No.1. On 20.10.2003 at about 11.15 PM, when he was proceeding in the lorry towards Mirchi yard, Guntur for loading; on the way when it reached Anjaneya Swami Temple, bye-pass road junction, Pedakakani, the driver stopped the vehicle and asked him to put kanuka in Hundi. Accordingly, the applicant got down from the lorry and put Kanuka in the Hundi and thereafter, when he was about to board the lorry, the driver without observing the applicant mounting started the vehicle, due to which he fell down on the road and sustained fracture injuries. Immediately he was shifted to Purna Sai Nursing Home for treatment. It is averred that accident was occurred due to rash and negligent driving of lorry driver. On these pleas, the applicant filed W.C.Case No.38 of 2004 against opposite parties 1 and 2 who are owner and insurer of the offending Lorry and claimed Rs.2,50,000/- as compensation.

a) AWs.1 to 3 were examined and Exs.A1 to A9 were marked on behalf of applicant and no oral or documentary evidence was let in on behalf of opposite parties.

c) The lower Tribunal dismissed the petition on the main reason that the applicant could not establish that he suffered physical disability in the accident and accordingly dismissed the claim.

Hence the appeal.

3) Heard arguments of Sri T.S.Rayulu, learned counsel for appellant and Smt. Jonna Ramani, learned counsel for R2/National Insurance Company Limited. Though notice served on R1/owner, none appeared on his behalf.

4) Criticizing the order of the Assistant Commissioner of Labour—II Circle, Guntur, learned counsel for appellant would argue that lower Tribunal grossly erred in dismissing the claim petition on wrong appreciation of evidence of AW3—doctor who treated the claimant and issued Ex.A5—wound certificate. Learned counsel vehemently argued that the aforesaid oral and documentary evidence would clearly show that claimant suffered fracture of right hip joint and right wrist joint for which he was treated in Purna Sai Nursing Home, Guntur belonging to AW3 and he underwent surgery conducted by AW3. The said doctor in his evidence clearly deposed that due to restricted movement of the wrist and right hip joint the claimant cannot do the job of Cleaner and he suffered 35% permanent

disability due to the both injuries. In spite of clear and cogent evidence, the Tribunal declined to grant compensation on the sole ground that AW3 being the MBBS doctor did not conduct operation by himself but conducted the same with the help of another orthopedic surgeon who was the best person to speak about the disability if any, and further, the doctor did not produce any medical record like case sheet, discharge summary, x-ray report etc. to substantiate that the claimant in fact suffered disability. Mere non-production of the documents cannot be taken as a ground to refuse compensation. He thus prayed to allow the appeal.

5) Per contra, learned counsel for 2nd respondent/Insurance Company would argue that except the oral assertion of AW3 there was absolutely no medical record to believe his evidence to the effect that claimant suffered 35% permanent disability and further, AW3 himself did not conduct operation, but admittedly he conducted surgery with the help of another surgeon whose name is not revealed and who was not examined before the lower Tribunal. Taking all the circumstances into account, the lower Tribunal rightly dismissed the claim application and there is no need to reconsider the claim.

6) In the light of above rival arguments, the point for determination is:

“Whether the order of the lower Tribunal is factually and legally sustainable?”

7) **POINT**: As per Section 3 of Workmen's Compensation Act, 1923 a workman is entitled to compensation for injuries sustained out of and during the course of employment when such injuries resulted either permanent or partial disablement. In the instant case, no doubt the claimant being the Cleaner under Opposite Party No.1 suffered injuries in a lorry accident out of and during the course of his employment. To this effect there is no demur. Ex.A3—FIR and Ex.A4—charge sheet would reveal that the claimant suffered fracture to hip joint and right wrist. Now, the crucial aspect is whether these injuries resulted in any disability for entitlement of compensation.

a) AW3—Dr. D.Koti Reddy claimed to have treated the claimant in his hospital—Purna Sai Nursing Home and conducted surgery. He, however, admitted that he conducted surgery with the help of another unnamed orthopedic surgeon. As rightly pointed out by counsel for respondent No.2, since the said orthopedic surgeon was neither named nor examined, it is not known whether the said orthopedic surgeon himself conducted surgery or he conducted the same in association with AW3. In any event, as observed by the lower Tribunal, the orthopedic surgeon was the best witness to speak about the disability if any, suffered by the claimant. Except oral evidence of AW3 that claimant suffered 35% disability, he did not produce x-ray reports or medical evidence to buttress his claim. Therefore, the lower Tribunal rightly held that claimant could not establish the physical disability

without which it is not apt to grant compensation to him. There is no irregularity or perversity in the order impugned.

8) The Appeal is accordingly dismissed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 07.06.2017
Murthy

