

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.261 OF 2005

JUDGMENT:

The present appeal is preferred by Opposite Party No.2 - M/s. National Insurance Company Limited in W.C. Case No.18 of 2004 on the file of the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Hyderabad-II (for short 'Commissioner') under Section 30 of Workmen's Compensation Act, 1923, challenging the order, dated 17.09.2004, passed by the Commissioner, whereby and where-under, a sum of Rs.2,02,655/- was awarded as compensation and Rs.1,000/- towards advocate fee and, thus, a total of Rs.2,03,655/- was awarded, taking the income at the relevant time as Rs.1437/- which is a statutory minimum wage and, thus, the formula applied by the Commissioner has been Rs.1437/- + $(480 - 374 = 106 \times 7.75 = 821.5)$ $821.5 = \text{Rs.}2258.5$ as the wage of the applicant and worked out the disability at 75%, applying the relevant age factor 199.40, arrived at Rs.2,02,655/- [$2258.5 \times 60/100 = 1355.1$ $\times 199.40 = 2,70,206.94 \times 75\%$].

2. The doctor, by name, Sri S.V. Chandra Shakar Reddy, was examined as PW.2, who has spoken at length the nature of injuries sustained by the applicant and the parts on which PW.1 sustained those injuries. There is no need to refer to the details, but the doctor

certified 100% loss of earning capacity which the Commissioner did not agree and took 75% by exercising his discretion.

3. Heard Ms. V. Padma, learned counsel for Mrs. S.A.V. Ratnam, learned counsel for the appellant, and Sri K. Jagathpal Reddy, learned counsel for respondent No.1 - applicant. The appeal against respondent No.2 was dismissed for default by order, dated 04.01.2012.

4. The learned counsel for the appellant would submit that the Commissioner was not clear in recording the finding that whether the applicant sustained injuries on his left side and on the right side of the person, and even it could not be made out from the evidence of Pw.2. The other ground taken is that none of the doctors from Gandhi Hospital was examined to prove Ex.A-3 said to have issued from Gandhi Hospital. It is also agitated that FIR and *panchanama* do not disclose that the applicant received injuries in the alleged accident. It is also alleged that there is no employee and employer relationship. These are the usual grounds agitated without anything brought out in the cross-examination of PWs.1 and 2, at least to the extent of evidence of PW.1 to suggest affirmatively that there is no employee and employer relationship and the applicant sustained injuries during the course of employment as employee of opposite party No.1. Further, the ground on which side of his person the applicant sustained injuries is not clear cannot be accepted for the reason that

the evidence of doctor is available which makes it very clear as to the parts of the person of the applicant affected with injuries. The very fact that the Commissioner has reduced the loss of earning capacity from 100% to 75% would show that the Commissioner applied his mind and awarded the compensation taking into minimum wage prevailing then. The appellant has not examined any witnesses as could be seen from the Appendix of Evidence as opposite party No.2. In such an event, there is absolutely no merit in the present appeal.

5. Therefore, the appeal is dismissed, confirming the order passed by the Commissioner in all respects. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 28, 2017.
Mgr