

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.133 OF 2005

JUDGMENT:

The National Insurance Company Limited – Opposite Party No.2 - being aggrieved by the order dated 28.10.2004 passed in W.C. No.117 of 2003 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, at Hyderabad (for short, 'the Tribunal'), wherein a sum of Rs.1,87,511/- was awarded as compensation, a sum of Rs.376/- towards stamp fee and a sum of Rs.500/- towards advocate fee, totalling to Rs.1,88,387/-, preferred the present appeal under Section 30 of the Workmen's Compensation Act, 1923.

2. Heard Sri R.K. Suri, the learned counsel for the appellant Insurance Company, and Sri V. Atchuta Rao, the learned counsel for the respondent No.1, and perused the material available on record. The appeal against respondent No.2 was dismissed for default vide Court Order, dated 4.1.2012, as he remained *ex parte* before the Tribunal below.

3. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

4. The facts in issue are as under:

The applicant/respondent No.1, working in the employment of the opposite party No.1, filed an application under the provisions of

Workmen's Compensation Act, 1923, claiming compensation of Rs.2,00,000/- (Rupees Two lakhs only) as he sustained injuries in an accident that took place on 25.01.2002. On the said day, while the applicant was on duty as cleaner of Lorry bearing No.HR 38 D 7152 and the driver of the said lorry having filled the diesel at Ravimore Petrol Pump and without waiting for the applicant to get into cabin started the vehicle and driven it in a rash and negligent manner. As a result, the applicant fell down and sustained crush injury to the left foot with compound dislocation of tarsal bones and extensive loss of muscle and skin. After the first aid treatment at Medchal Hospital, the applicant was shifted to Gandhi Hospital, Secunderabad, and from there to NIMS Hospital for better treatment, whereat the claimant underwent surgery and skin grafting. The applicant stated that the doctors advised him rest for six months, but he has not regained. He further stated that because of the injuries, he suffered permanent disability. In respect of the above incident, a case in Crime No.19 of 2002 of Medchal P.S. was registered under Section 338 of I.P.C. Since the accident occurred in the course of employment due to the negligence of the driver and 2nd respondent, being insurer, the applicant filed W.C. No.117 of 2003 claiming compensation of Rs.2,00,000/- (Rupees Two lakhs only).

5. The 1st opposite party remained *ex parte* before the Tribunal. The 2nd opposite party – Insurance Company - filed counter denying the material averments in the petition and also the manner in

which the accident took place, injuries received and the expenditure incurred for treatment. Registration of case by the police, age of the applicant as 21 years and wages of the applicant at Rs.3,000/- per month are also denied and contending that the compensation claimed is highly exorbitant, requests to dismiss the claim against the 2nd opposite party.

6. Basing on the above pleadings, the Tribunal below framed the following points:

- (1) Whether the applicant met with an accident on 25.1.2002 in the course of his employment as cleaner on the lorry bearing No.HR 38 D 7152 in the employment of the 1st opp. Party and sustained injuries?
- (2) If yes, what is the percentage of disability and the consequential loss of earning capacity suffered by the applicant?
- (3) Who are liable to pay compensation to the applicant? And
- (4) What is the amount of compensation entitled by the applicant?

7. In support of the claim, the applicant himself examined as A.W.1 and got examined the Doctor as A.W.2, apart from marking Exs.A1 to A7, and Ex.D1 – Insurance Policy. On behalf of the opposite parties, no oral or documentary evidence is adduced.

8. After considering the oral and documentary evidence available on record, the Tribunal below came to the conclusion for the loss of earning suffered by the applicant due to the injuries sustained in an accident that occurred on 25.1.2002 during course of employment as

cleaner of Lorry bearing No.HR 38 D 7152, awarded a compensation of Rs.1,87,511/-, a sum of Rs.376/- towards stamp fee and a further sum of Rs.500/- towards advocate fee, totalling to Rs.1,88,387/-.

9. Aggrieved over the same, the present Civil Miscellaneous Appeal is preferred mainly on two grounds. Firstly, the authority went wrong in treating 100% disability as against 30% disability shown by the medical evidence. Second, the authority has no technical expertise to arrive at 100% disability with its perception by just seeing the injured organ of the applicant.

10. The point that arises for consideration is whether the accident occurred due to rash and negligent driving of the lorry, and whether the compensation of Rs.1,87,511/-, a sum of Rs.376/- towards stamp fee and a sum of Rs.500/- towards advocate fee, totalling to Rs.1,88,387/-awarded by the Tribunal is reasonable, just and fair.

11. The following substantial questions of law formulated by the appellant in the grounds of appeal, read thus:

- (1) Whether the Court below committed error in giving a finding in respect of percentage of disability contrary to evidence on record i.e., considering as 75% instead of 30%?
- (2) Whether the G.O.Ms.No.30, Labour-II, dt. 27.2.2000 relied upon by the Court below is applicable to the facts of the case?
- (3) Whether the Court below is competent to determine nature of injuries as described by the claimant in the absence of record available on the file of the Court?

(4) Whether the Court committed error of law in accepting the version of the claimant in respect of description of accident and consequential injuries in the absence of medical evidence and evidence of competent witnesses?

(5) Whether the determination of compensation adopted by the Court below is sustainable under law?

12. The reasons assigned by the authority in taking into consideration 100% disability is to be found in paragraph-14, thus:

“14. Ex.A4 is the discharge record of the applicant issued by NIMS Hospital, Hyderabad and Ex.A5 is the disability certificate issued by an orthopaedic surgeon, A.W.2. The injuries sustained by the applicant as found in the medical records of NIMS Hospital and in Ex.A3, Ex.A4 and Ex.A5 are all the same injuries. The doctor stated that the applicant needs repeated surgery and the ulcers are not healed. There is painful limitation movements of the leg. The doctor estimated the physical disability at 30%. The applicant claimed that he has suffered total loss of earning capacity due to the physical disability and wanted his loss of earning capacity to be considered as 100%. The loss of earning capacity has to be estimated vis-à-vis nature of employment of the applicant. The disability of the applicant could be seen even with naked eye. There is a badly wrangled foot, there is painful limitation of mid-tarsal joint. Therefore, keeping in view the nature of the employment of the applicant as cleaner of a heavy goods vehicle, which involves stress and strain, I am inclined to assess the loss of earning capacity at 75%.”

13. The age of the applicant was taken as 21 years basing on evidence available on record and in paragraph-17 though the applicant has come up with monthly wages at Rs.2,400/- per month, but, however, the Commissioner restricted it to Rs.1,437/- towards basic wage of cleaner and Rs.434/- towards VDA making a total of Rs.1,871/- as wage per month and worked out compensation thus:

$$\text{Rs.1871} \times \frac{60}{100} \times \frac{75}{100} \times 222.71 = \text{Rs.1,87,511/-}$$

14. The learned Standing Counsel for the appellant would insist the aforesaid two grounds are against the medical proof as

regards the percentage of disability assessed by the medical officer as the authority therefor was incompetent to arrive at a different conclusion.

15. The observations made by the authority as mentioned in paragraph-14 cannot just be brushed aside irrespective of the fact whether the cleaner's job is technical or otherwise as the very fact that he suffered badly wrangled foot is sufficient to arrive at that it comes in the way of pursuing any occupation not just the job of cleaner of a heavy goods vehicle.

16. Therefore, certainly, the quantum of compensation awarded by the Tribunal warrants no interference.

17. Accordingly, the Appeal fails and the same is dismissed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 04.08.2017
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