

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.4146 OF 2004

JUDGMENT:

The erstwhile Andhra Pradesh State Road Transport Corporation, Hyderabad, is the appellant herein, which is opposite party in W.C. Case No.112 of 2002 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-IV, Hyderabad (for short 'Commissioner'). Aggrieved over the award of Rs.2,99,322/ granted towards compensation for the loss of earning capacity or power of 75%, by the award, dated 12.07.2004, the Corporation preferred the present appeal under Section 30 of the Workmen's Compensation Act, 1923 (for short 'Act 1923').

2. The appellant herein is the opposite party in the aforesaid W.C. Case, while respondent is the applicant.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the aforesaid W.C. Case.

4. The Commissioner basing on the application and counter filed by the opposite party framed the following points for consideration:

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1. Whether the applicant Sri Mahaboob Ali met with an accident on 23.12.2000 which arose out of and in the course of his employment as auto driver on bus bearing No.AP 10Z 3701 in the employment of the opp.party-corporation and sustained injuries?

2. If yes, what is the percentage of the physical disability and the subsequent loss of earning capacity suffered by him and liability of the employer?
3. What is the amount of compensation entitled by the applicant? ”

5. Before the Commissioner, the applicant examined himself as AW.1 and the doctor, who treated him as AW.2 and marked Exs.A-1 to A-5, whereas, on behalf of the opposite party, the Deputy Superintendent of Bus Depot, Zaheerabad was examined as RW.1 and marked Exs.R-1 and R-2, which are certified copy of the S.R. and copy of domestic enquiry report.

6. The Commissioner deliberated on issue No.1 in the light of Exs.R-1 and R-2 and recorded a finding that the accident occurred on 23.12.2000 during the course of employment of the applicant as driver and the accident arose out of his employment under the opposite party. On issue No.2, relating to the percentage of disability, basing on the evidence of an Orthopaedic Surgeon examined as AW.2, who has spoken to about 50% disability (i.e., 40% to the hip and 10% for the knee) and the applicant had mal-union of right hip fracture with decreased range of movements and Post-traumatic arthritis of right knee that resulted fracture of right patella; and in his cross-examination, he clearly stated that the applicant cannot do even cleaner's work, the Commissioner arrived at 75% towards loss of earning power and taking the wage of Rs.4000/- per month, and since the applicant sustained permanent disability, taking the age factor of

166.29, arrived at Rs.2,99,322/- [Rs.4000 x 60/100 x 75/100 x 166.29]. The Commissioner also awarded a sum of Rs.600/- towards stamp fee and Rs.500/- towards advocate fee and, thus, awarded a total compensation of Rs.3,00,322/- with interest at 8% per annum from the date of filing the claim application.

7. The Commissioner has examined in detail the contentions of the opposite party to the effect that; i) there was huge damage caused to the bus and a sum of Rs.2.00 lakhs was spent for its repairs; ii) that the applicant was removed having held departmental inquiry; iii) that even passengers travelling in the said bus received injuries and they were paid ex-gratia and, therefore, the applicant was not entitled to any amount which submissions were negatived in toto by the Commissioner referring to the provisions of Section 3 of the Act, 1923 and the authority in **Satyabadi Naik v. Damelikihill**¹.

8. The aforesaid award is under challenge in the instant appeal formulating the substantial questions of law thus:

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- I. Whether the Workmen's Compensation Act, 1923 has no application to the facts of the case and whether the learned Commissioner has Jurisdiction to award compensation in the facts and circumstances of the case?
- II. Whether the findings of the learned Commissioner is perverse?
- III. Whether under Section 4 (1) (b) of the Workmen's Compensation Act, 1923 the applicant would be entitled to compensation not exceeding Rs.90,000/- is the learned

¹. (1991) 1 TAC 368 at 370 Cal

Commissioner justified in awarding compensation of Rs.2,99,322/-?

IV. When the applicant claimed compensation of Rs.2,00,000/- is the learned Commissioner justified in awarding compensation of Rs.2,99,322/-.”

9. Now, the point that arises for consideration is, whether the award under challenge cannot be sustained?

10. The three grounds specified by the appellant herein that i) on account of own negligence of the applicant resulting damage to the RTC bus, the Corporation incurred huge amount to get it repaired; ii) the applicant was removed from service; and iii) the injured, who were travelling in the bus on account of the accident caused by the applicant's own negligence, were paid ex-gratia and, therefore, the applicant is not entitled for any compensation, are concerned, they would not sustain so long as the relationship between the employer and employee exists and opposite party's acceptance of an accident and injuries sustained by the driver of RTC bus accounting for permanent disability. No authority is placed by the appellant to substantiate the said stand. On the other hand, the Commissioner had examined the provisions of Section 3 of the Act, 1923, and the law laid down in **Satyabadi Naik**¹ in recording the aforesaid finding. Therefore, it cannot be said that the Commissioner went wrong in awarding compensation.

11. The next question is, whether the Commissioner was right in awarding Rs.2,99,322/-, despite the fact that the claim was only for

payment of Rs.2.00 lakhs towards compensation. Though, no direct authority is placed, but it would be appropriate to refer to the decision in **Oriental Insurance Company Limited v. Mohd. Nasir and another**². The Hon'ble Supreme Court, while observing that the function of the Commissioner is to determine the amount of compensation as laid down under the Act, and even if no amount is claimed, the Commissioner must determine the amount which is found payable to the workman and that even in the cases arising out of the 1988 Act, it is the duty of the Tribunal to arrive at a just compensation having regard to the provisions contained in Section 168 of the Act, held in paragraph No.27 thus:

“27. The function of Commissioner is to determine the amount of compensation as laid down under the Act. Even if no amount is claimed, the Commissioner must determine the amount which is found payable to the workman. Even in the cases arising out of the 1988 Act, it is the duty of the Tribunal to arrive at a just compensation having regard to the provisions contained in Section 168 thereof.

In *Nagappa v. Gurudayal Singh and Ors.* [AIR2003SC674] , it is held:

20. Similarly, the High Court of Punjab and Haryana in **Devki Nandan Bangur and Ors. v. State of Haryana and Ors.** observed that the grant of just and fair compensation is statutory responsibility of the Court and if, on the facts, the Court finds that the claimant is entitled to higher compensation, the Court should allow the claimant to amend his prayer and allow proper compensation.

21. For the reasons discussed above, in our view, under the M.V. Act, there is no restriction that Tribunal/Court cannot

². (2009) 6 SCC 280

award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award 'Just' compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under Sub-section (4) to Section 166, even report submitted to the Claims Tribunal under Sub-section (6) of Section 158 can be treated as an application for compensation under the M.V. Act. If required, in appropriate cases, Court may permit amendment to the Claim Petition.

In *Syed Basheer Ahmed and Ors. v. Mohd. Jameel and Anr.* [AIR2009SC1219] , this Court held:

9. Section 168 of the Act enjoins the Tribunal to make an award determining "the amount of compensation which appears to be just." However, the objective factors, which may constitute the basis of compensation appearing as just, have not been indicated in the Act. Thus, the expression "which appears to the just" vests a wide discretion in the Tribunal in the matter of determination of compensation. Nevertheless, the wide amplitude of such power does not empower the Tribunal to determine the compensation arbitrarily, or to ignore settled principles relating to determination of compensation.

In *National Insurance Co. Ltd. v. Laxmi Narain Dhut* [AIR2007SC1414], this Court held:

24. In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot be extended to the owner of the offending vehicle. The logic of fake licence has to be considered differently in respect of the third party and in respect of own damage claims.

In *Punjab State Electricity Board Ltd. v. Zora Singh and Ors.* [AIR2006 SC182] , this Court held:

22. The administrative circulars as thence existed as also the regulations indisputably require supply of electrical energy to the agriculturists within a period of two months from the date of

receipt of the amount asked for in terms of the demand notice. It may be true that the note appended thereto provides that the period specified therein shall be subject to availability of requisite material but the same does not absolve the appellant from performing its statutory duties.

23. In A.P. SRTC v. STAT a Full Bench of the Andhra Pradesh High Court has noticed thus: (An LT p.544, para 31)

31 [24]. The meaning of 'note' as per P. Ramanatha Aiyar's Law Lexicon, 1997 Edn. is 'a brief statement of particulars of some fact', a passage or explanation.

24. The note, therefore, was merely explanatory in nature and thereby the rigour of the main provision was not diluted.

See also State of Haryana and Ors. v. Shakuntla Devi [AIR2009SC869]”

12. Examining the cases under the provisions of the Act, 1923, referred to by the Hon'ble Supreme Court in the aforesaid judgment, in paragraph Nos.17, 18, 19 and 20 thus:

“17. The learned Tribunal had held that there has been a 15% disability but then there was nothing to show that he suffered 100% loss of earning capacity. The Commissioner has applied the 197-06 as the relevant factor, his age being 35. He, therefore, proceeded on the basis that it was a case of permanent total disablement. However, his income was taken to be at Rs. 1,920/- per month. There is nothing on record to show that the qualified medical practitioner opined that there was a permanent and complete loss of use of his right leg or that he became totally unfit to work as a driver. In that situation, the High Court, in our opinion, was not correct in determining the loss of income at 100%.

In Ramprasad Balmiki v. Anil Kumar Jain and Ors. [(2008) 9 SCC 492], wherein upon referring to the evidence of the Doctor

who did not say that any permanent disability had been caused, this Court held:

Be that as it may, the High Court, in our opinion, correctly proceeded on the assumption that the extent of permanent disability suffered by the appellant is only 40% and not 100%.

We, therefore, are of the opinion that the extent of disability should have been determined at 15% and not 100%. The appeal is allowed to the aforementioned extent.

CA @ SLP (C) No. 16171 OF 2006

18. Shaik Baji was a cleaner of a truck. He suffered an injury on the leg. The disability was determined at 20% to 25%. The disablement was partial and not total. There was no basis for the High Court to assess the loss of earning capacity at 60%. Respondent No. 1 being a cleaner, a fracture in the leg suffered by him would not amount to loss of permanent use of the limb, i.e., the entire foot. The note appended to the Second Schedule, therefore, has no application.

Therefore, the judgment of the High Court is set aside and that of the Commissioner, Workmen Compensation is restored. Appeal is allowed accordingly.

CA @ SLP (C) No. 21012 OF 2006

19. Accident occurred in this case by reason of the use of a vehicle. Both the claimants were casual workmen. Whereas in the former case the disability was assessed at 40%, the loss of earning capacity was taken to be 80%. We do not know on what basis, the same was arrived at. According to the doctor, he suffered injury. The doctor having found the disability to the extent of 40% could not have determined the loss of earning capacity to 80%.

Therefore, the judgment and order of the High Court as well as the Commissioner to that extent cannot be sustained. It is set aside accordingly. Appeal is allowed and the amount of compensation may be calculated on the said basis.

CA @ SLP (C) No. 74 OF 2007

20. In this case, respondent No. 1 was engaged as a casual labour for loading and unloading the broken rice from a lorry. The said lorry collided with a stationed lorry as a result whereof respondent No. 1 received injuries. The doctor assessed his physical disability at 40% and the loss of earning capacity as 80%.

The learned Commissioner, in his award, assessed the physical disability at 80% and loss of earning capacity at 100%. The High Court confirmed the award. No reason has been assigned therefor.

The impugned judgment and order of the High Court and award passed by the learned Commissioner, thus, cannot be sustained and set aside accordingly. Appeal is allowed to the said extent.”

13. Now, turning to the case at hand, the disability spoken to by AW.2 - Medical officer at 50% cannot be hiked to 75% without assigning proper reasons. Therefore, treating the disability as 50% in view of the authority in **Mohd. Nasir**², the disability is taken as 50% and, thus, when calculated applying the formula, the loss of earning power works out to Rs.1,99,548/- [4000 x 60/100 x 50/100 x 166.29]. The stamp duty and advocate fee awarded by the Commissioner at Rs.600/- and Rs.500/- respectively are maintained. The interest granted by the Commissioner at 8% per annum is also maintained. Thus, the award passed by the Commissioner is modified reducing the compensation to Rs.2,00,648/-, which includes the stamp duty and advocate fee from Rs.3,00,322/-.

14. The appeal is, accordingly, allowed in part to the extent indicated in the above. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand disposed of.

A. SHANKAR NARAYANA, J

October 20, 2017.

Mgr

