

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL MISCELLANEOUS APPEAL No.4161 of 2003

JUDGMENT:

The order, dated 11.09.2003, passed by the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-II, Hyderabad (for short 'the Commissioner'), under the provisions of the Workmen's Compensation Act, 1923, in W.C.No.54 of 2003, determining the compensation payable to respondent No.1 herein, is challenged before this Court.

The facts of the case, in brief, are that on 01.03.2003, respondent No.1 was working on lorry bearing No.AP24 U 6568 as a Cleaner and when the said lorry was proceeding from Suryapet towards Calicut and when it reached near Chinna Adiserlapally Village outskirts, on account of the tyre puncture, the driver stopped it and while respondent No.1 was changing the tyre, suddenly, one lorry bearing No.AP7 V 3549, insured with the appellant, driven by its driver in rash and negligent manner, dashed his lorry from behind, due to which, he sustained grievous injuries. Hence, he filed aforesaid W.C.No.54 of 2003, in which, the Commissioner determined the compensation of Rs.3,05,455/- payable to respondent No.1 by the appellant and respondent No.2. Aggrieved by the same, the

insurance company, insurer of the crime vehicle, filed the present appeal.

Sri Naresh Byrapaneni, learned Standing Counsel for the appellant, raised two grounds, 1) as per the evidence of the doctor and the certificate issued by him, disability is only to the extent of 50%, whereas the Commissioner had taken disability at 100%, and 2) the wage that was being paid to respondent No.1 was Rs.2,057/- but the Commissioner had taken the same at Rs.2,237/-. In support of his first contention, he would rely on the judgment of this Court reported in **United India Insurance Company Limited v. S.K. Razak and another**¹, wherein it held that the doctor's evidence cannot be ignored and the disability has to be taken as per the medical certificate but the Commissioner cannot assess the same and substitute his opinion.

Learned counsel for respondent No.1 opposes the appeal and submits that the Commissioner correctly determined the compensation payable to respondent No.1, as such, the order under appeal does not call for any interference by this Court. He also submits that an amount of Rs.2,237/- towards wage was rightly taken by the Commissioner based on the evidence and after taking into consideration the wage that is being paid to the Cleaners at that point of time.

¹ 2016 ACJ 314

As can be seen from the record, there is no material placed before this Court with respect to the wage that was being paid to respondent No.1, as such, the contention of the learned Standing Counsel for the appellant in relation to the same is rejected. So far as the percentage of disability is concerned, A.W.2 - doctor had deposed before the Commissioner that the disability is to the extent of 50%. Ignoring the same, the Commissioner had taken the disability at 100% which is an error. In view of the same and in the light of the judgment of this Court in **S.K. Razak** (supra), the compensation payable to respondent No.1 is required to be calculated by restricting his disability to 50%. In the circumstances, the compensation payable to respondent No.1 would be Rs.1,51,923.61 ($2237 \times 60/100 \times 50\% \times 226.38$), which is rounded off to Rs.1,51,924/-.

Accordingly, the appeal is allowed modifying the order under appeal by reducing the compensation to Rs.1,51,924/-.

Miscellaneous Petitions, if any pending shall stand disposed of. There shall be no order as to costs.

CHALLA KODANDA RAM, J

13th DECEMBER, 2017.

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