

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

C.M.A.No.427 of 2007

JUDGMENT:

This appeal is filed by the Insurance Company against the orders dated 25.08.2006 in W.C.No.20 2001 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Khammam.

The workman in this case is one Md. Anwarulla Khan @ Anwar. He filed a case against respondents 1 & 2, who are the partners of a firm called Udaya Laxmi Par Boiled Rice Mill, Khammam. Respondent No.3 is the New India Assurance Company Limited. The applicant states that he was obtaining a monthly salary of Rs.2,400/- and that on 06.03.2001 he met with an accident in the course of his employment, which resulted in a disability and therefore, he claimed a total compensation of Rs.1,34,266/- along with interest and costs.

The first respondent filed a counter denying the wages etc., and stating that there is a valid insurance policy obtained from third opposite party/insurance company, therefore, they state that third opposite party should be liable to pay compensation. They state that they have also incurred an amount of Rs.20,906.80 paise towards medical expenses.

Second Opposite Party filed a detailed counter stating among other things that on 04.08.2001 the Labour Officer passed an order holding that there is an injury caused out of and in the course of employment and that on 04.08.2001

itself the Commissioner assessed the loss of earning capacity as Rs.76,244/-. As per the appellant, the amount was also deposited by Opposite Parties 1 & 2, vide Demand Draft No.221750, dated 04.09.2001.

During the course of hearing before the Commissioner for Workmen's Compensation, the applicant was examined as PW.1, the owner of the Rice Mill was examined as RW.1 and an Official from the Insurance Company was examined as RW.2. Exs.A.1 to A.3 were marked on behalf of the applicant while Exs.B.1 to B.6 were marked on behalf of the respondents.

After considering the oral and documentary evidence, the Commissioner for Workmen's Compensation came to a conclusion that the total compensation payable is Rs.1,34,266/- and he directed that an amount of Rs.76,599/- which was already paid to the applicant should be deducted from the remaining balance payable with interest. It is this order that is assailed in the present appeal.

Ms. I. Maamu Vani, learned standing counsel for the appellant/Insurance Company points out that the worker made an attempt to play fraud and that he did not disclose the fact that there was an assessment of compensation by the Commissioner. She points out that Ex.B.1 is the order dated 04.08.2001 of the Commissioner for Workmen's Compensation and Labour Officer, Khammam under which the loss of earning capacity is assessed as 30% and

respondents were called upon to deposit a sum of Rs.76,244/-, which was actually deposited by first respondent, through Ex.B.2-letter dated 04.09.2001. A copy of the demand draft is marked as Ex.B.3. The learned counsel rightly pointed out that the claim petition in the present case was filed on 29.08.2001, which is after Ex.B.1-order. She rightly points out that the workman suppressed this fact and tried to file the case as if he has not received any compensation whatsoever.

The learned counsel also points out that there are various assessments of disability. The initial order passed by the Commissioner for Workmen's Compensation, which is marked as Ex.B.1, assessed the disability as 30%. The medical board certificate, which is marked as Ex.A.1, shows that there is 50% disability. In addition, the employee of Insurance Company (RW.3) during the course of his evidence has filed a document to show that the injured was examined by their Doctor, who assessed the disability as only 10%. Therefore, the learned counsel for the appellant/ insurance company assailed the findings in the impugned order on the grounds of attempted fraud and that there is no certainty about the assessment of the disability.

In reply to this, Sri K. Pardha Saradhi, learned counsel for the respondents 2 & 3/partners, argued that there is no infirmity in the order of the Commissioner for Workmen's Compensation and that after considering all the facts and

circumstances, he came to an independent conclusion about the disability. He also argued that the order of the Commissioner is a reasoned order passed after considering all these circumstances. Therefore, he submits that there is no reason to interfere with the impugned award.

After examining all the submissions and the evidence on record, it is clear that the applicant, who had already benefited by filing claim petition, suppressed the fact that the Commissioner has already passed an order directing to deposit of Rs.76,244/- after assessing the disability. It is not clear when exactly the case was filed, but from the submissions, it appears that the case was presented on 03.09.2001 in the lower Court. On the next day, the demand draft was deposited by the respondents 1 & 2. The applicant also suppressed the fact that on 27.06.2001 he was medically examined by the third respondent/insurance company and that there was an assessment of damages.

In the course of chief examination, he agreed that he received a sum of Rs.76,599/- towards compensation deposited by respondents 1 & 2, but he states that he received the same under protest. However, there is no documentary proof available in the record to show that he received the amount "under protest". It is also pertinent to state here that the witness admits that respondents 1 & 2 bore all his medical expenses for the initial treatment and that during the period of treatment, he was also paid Rs.80/-

per day. The other important admission is to the following effect:

“I did some light work which I could do after my treatment and I received wages for the work done by me from the respondents 1 & 2.”

The second witness is Dr. K. Hari Prasad, who deposed on 28.09.2002 and he states that he has examined the applicant PW.1 on the same day (28.09.2002). He did not issue Ex.A.1-disability certificate. However, he states that he confirms the findings of Ex.A.1 and the disability is 50%. In the cross-examination, he clarifies that the disability of the left hand is 50% alone. He agrees that PW.1 can do his normal work with his right hand.

The learned counsel for the appellant/insurance company is right in pointing out that the Doctors, who actually certified that the disability is 50% in Ex.A.1 were also in the same town as Dr.K. Hari Prasad, but none of them were examined. She also right in pointing out that Ex.A.1 assessed the loss of disability at 50%, Ex.B.1 assessed the loss of disability at 30%, whereas Ex.B.4 assessed the loss of disability at 10%. In view of these three different findings, the learned counsel states that the Commissioner erred in fixing the disability as 50% on the basis of Ex.A.1 alone. It is clear that no reasons were given for discrediting or ignoring the other two certificates. No reasons were given for not examining the Doctors who issued Ex.A.1. She is right in

contending that an adverse inference should be drawn against the applicant.

The learned counsel also points out that even if Ex.A.1 and the testimony of RW.2 are taken into account, the 50% disability is only to the one hand and the applicant can do his normal work with his right hand and there is no impediment to his livelihood. She argues that RW.2 clearly deposed about these three certificates and yet there is no cross-examination on the important parts of his evidence. Similarly, she points out that both RW.1 and PW.1 clearly admitted the fact that during the period of treatment, the applicant was paid the wages and his medical expenses were also reimbursed. Therefore, she urges that the Commissioner for Workmen's Compensation should have taken into account all these factors before assessing the damages. She also urges that it is a fundamental part of his jurisprudence that there cannot be two adjudications for the same cause and two orders cannot be passed for the same accident. She is also right in contending that if the workman is dissatisfied with Ex.B.1-order dated 04.08.2001 or the assessment of compensation therein, he should not have been accepted the same. Having accepted the benefit, he cannot file another application for further assessment of compensation. She also pointed out that the Commissioner in his order 25.08.2006 brushed aside all these objections and held that second assessment is possible for the same accident and that Ex.A.1 carries more

weight when compared to Ex.B.1. She submits that the reasoning of the Commissioner is not valid and if such reasoning is allowed to stand, there will be multiple assessments and multiple cases for the same injury and same accident. Therefore, it is urged that the award should be set aside.

There is considerable force in the argument of the learned counsel for the appellant/insurance company. The Commissioner was wrong in allowing the second assessment of the compensation for the same accident. The Commissioner should have noticed that the workman had received the benefit under Order dated 04.08.2001 and he should not held that the facts and circumstances of the case the second assessment is wrong. The Commissioner was also wrong in holding that assessment under Ex.A.1 is correct and he did not give any reason to show upon the other two assessments are not correct. Equally, important is the fact that the assessment of disability in Ex.B.1 was by his own office. Therefore, he was under duty to give valid reasons why the first assessment of disability under Ex.B.1 at 20% was incorrect. The important admissions made by AW.1 and also the Doctors were overlooked by the Commissioner while passing the impugned order as the assessment of disability was only for one arm and not for both arms. The fact that PW.1 admitted that he could do a job with right hand is also overlooked. The Commissioner as a quasi-judicial authority

was under an obligation to consider the entire evidence and accept or reject the same with clear and cogent reason. While he is not expected to write a detailed judgment like a trained judicial officer; still by virtue of the fact that he is exercising certain judicial function; an order with reasons discussing the entire evidence is a *sine qua non*. The same is lacking in this case.

Apart from all the above, the Commissioner overlooked the fact that Ex.B.1 was not challenged and was accepted by the workman. As a quasi judicial authority, it is duty of the Commissioner to recognize principles of *res judicata/ estoppel* etc.

For all these reasons, this Court holds that the impugned order dated 25.08.2006 in W.C.No.20 2001 of the Commissioner is erroneous and should be set aside. Having received the benefit under Exs.B.1, the employee is not entitled to any more compensation.

Hence, the Civil Miscellaneous Appeal is allowed setting aside the impugned order dated 25.08.2006 of the Commissioner for Workmen's Compensation, Khammam in W.C.No.20 of 2001. However, there shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 13.11.2017
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