

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

CIVIL MISCELLANEOUS APPEAL No.782 OF 2007

JUDGMENT:

This is an appeal filed against the order dated 27.05.2007 in W.C.No.32 of 2005 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour Circle-II, Visakhapatnam.

The brief facts of the case are that the appellant/applicant filed the said W.C. against the owner of the van bearing No.AP31U 7128 and the insurer of the subject van claiming compensation for the injuries sustained by him in the accident occurred on 30.07.2002, during the course of his employment.

The opposite party No.1 was set ex parte. The opposite party No.2 filed a counter denying all the allegations mentioned in the application. After the pleadings were completed, evidence was taken. On behalf of the applicant, he himself was examined as A.W.1 and he got examined Dr. G.Naga Srinivas as A.W.2 and got marked Exs.A.1 to A.12. On behalf of the opposite party No.2, R.Ws.1 to 3 were examined and got marked Exs.R.1 to R.7. The Commissioner for Workmen's Compensation, after assessing the evidence, came to a conclusion that opposite party No.1 is liable to pay compensation of Rs.1,43,558/- to the applicant.

Being dissatisfied with the quantum of compensation and also by the fact opposite party No.2 (Insurance Company) was not held liable, the applicant filed the present appeal.

Heard Sri S.M.Subhan, learned counsel for the petitioner and Sri R.K.Suri, learned counsel for respondent No.2.

As far as the exoneration of the 2nd respondent is concerned, the learned counsel rightly pointed out that the record in the case is crystal clear. The appellant did not have a licence to drive a medium or a heavy motor vehicle. His license was valid only for driving a light motor vehicle and a motor cycle. The evidence of the official of the Insurance Company and of the two witnesses Sri Karunakar and Sri Sanyasi Rao (who are from the Road Transport Office) make it clear that the appellant was not licensed to drive the Eicher van in question. The documents filed Ex.R5 (Register of the vehicle) and Ex.R7 (Driving Licence) make this clear. Therefore, as the driver did not have a valid licence; the exclusion clause in the policy applies and R.2 is rightly exonerated. No fault can be found with this part of the order.

As far as the assessment of loss of disability is concerned, the doctor, who gave the report was examined as A.W.2. His disability certificate Ex.A.12 is based on Exs.A.10 and A.11 along with clinical examination. The doctor assessed the functional disability @ 35%. The lengthy cross-examination of this witness does not in any way take away the intrinsic worth of his assessment. He states that it is based on clinical and radiological assessment. The lower Court assessed the loss of earning capacity also based on this. The age of the appellant was taken from the records while the wages were as per the minimum wages prescribed which is the correct method and is as per the settled law.

Therefore, the lower Court was right in assessing the compensation payable. The lower Court was also right in

exonerating the opposite party No.2 (Insurance Company) as the conditions of the policy were flouted by the appellant.

For all these reasons, the appeal is dismissed and the order of the lower court is confirmed. No costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date : 11.12.2017
ssp

