

SMT JUSTICE ANIS
CIVIL MISCELLANEOUS APPEAL No.4030 of 2004

JUDGMENT:

This appeal is filed by the appellant-claimant under Section 30 of the Workmen's Compensation Act, 1923 (for short, 'the Act') aggrieved by the order dated 07.08.2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad (for short, 'the Commissioner for Workmen's Compensation') in W.C.No.540 of 2003 awarding compensation of Rs.1,07,586/-.

2. The appellant-claimant filed the above Workmen's Compensation case under Section 22 of the Act claiming compensation of Rs.5,00,000/- with interest @ 24% per annum from the date of petition till realisation with costs against the Opposite Parties 1 and 2.

3. For the sake of convenience, the parties are referred to as arrayed in the Workmen's Compensation case before the Commissioner for Workmen's Compensation.

4. The brief averments made in the Workmen's Compensation case are as follows:

The appellant herein, who is the applicant before the Commissioner for Workmen's Compensation, filed an application under Section 22 of the Act against the Opposite Parties claiming compensation of Rs.5,00,000/- for the

fracture injuries sustained by him during the course of employment under the Opposite Party No.1. The applicant was working as labourer under the Opposite Party No.1 on the Lorry bearing registration No.ABT 1417 since two months prior to the accident. At the time of accident, the applicant was aged about 27 years and drawing the salary of Rs.4,000/- per month and batta of Rs.30/- per day from the Opposite Party No.1. Opposite Party No.2 is a valid Insurance Company at the time of accident. On 11.07.2003, the applicant went on his duty along with five other labourers, cleaner and driver under the instructions of Opposite Party No.1 to Mamidipalli stone machine, loaded the stone and while coming to Nizamabad at about 7.45 P.M. when the vehicle reached near Chinnapur Gandhi crossing, while overtaking one car the driver applied sudden brake, due to which the vehicle was uncontrolled and turned turtle in a ditch. As a result, the applicant, other labourers, driver and cleaner received fracture injuries and the lorry was damaged. The applicant received fracture injuries on right leg, left knee, right wrist, injuries on head, both legs, chest and other parts of the body. Immediately, the applicant was shifted to the Government Hospital, Nizamabad, and thereafter he was referred to hospital at Hyderabad. But, the applicant was admitted in a private hospital at Nizamabad and thereafter taking Ayurvedic treatment at Pitlam and Walgote. The Police, Makloor,

registered a case in F.I.R. No.103 of 2003 under Section 337 I.P.C. Finally the applicant prayed the Commissioner for Workmen's Compensation to grant compensation of Rs.5.00 lakhs with interest @ 24% per annum.

5. Opposite Party No.1 filed a counter, wherein he denied that he was paying salary of Rs.4,000/- per month and batta of Rs.30/- per day to the applicant. According to the Opposite Party No.1, the applicant was paid only Rs.4,000/- per month and batta of Rs.10/- per day. Since one month prior to the accident, the applicant was working as labourer with Opposite Party No.1. Opposite Party No.1 admitted that the vehicle was insured with Opposite Party No.2 and therefore, Opposite Party No.2 alone is liable to pay compensation and finally prayed the Commissioner for Workmen's Compensation to dismiss the application against him.

6. Opposite Party No.2 filed the counter and denied all the material allegations made in the application, filed by the applicant, and put the applicant to prove the manner of accident, age and income of the applicant and also denied that the accident occurred during the course of employment under Opposite Party No.1 and finally stated that the compensation claimed by the applicant is high and excessive and prayed the Commissioner for Workmen's Compensation to dismiss the application.

7. Basing on the pleadings, the Commissioner for Workmen's Compensation framed two issues, and to substantiate the claim, the applicant examined himself as PW.1 and also got examined Dr. T.Narsing Rao as PW.2 and got marked exhibits A1 to A13. Opposite Party No.1 was examined as RW1 and Sri Padma Rao was examined as RW2 and exhibits B1 to B4 were marked on behalf of the Opposite Parties.

8. After considering the oral and documentary evidence, the Commissioner for Workmen's Compensation has awarded a compensation of Rs.1,07,586/- to the applicant.

9. Being not satisfied with the said compensation, the applicant filed the present appeal.

10. Learned counsel for the appellant argued that though respondent No.1 admitted that he was paying Rs.4,000/- per month as wages along with Rs.10/- per day as batta and further argued that the Commissioner for Workmen's Compensation has taken only Rs.1,800/- as monthly wages and awarded a meagre compensation, likewise the interest @ 12% per annum was also not awarded in view of the amendment of the Act, and therefore, prayed the Court to grant the enhanced compensation.

11. Appeal against respondent No.1 was dismissed for default on 18.03.2016.

12. On the other hand, learned counsel for the Insurance Company-respondent No.2 argued that there is no proper evidence produced by the applicant to prove that the Opposite Party No.1 was paying Rs.4,000/- as monthly wages along with batta of Rs.30/- per day. Learned counsel further argued that the applicant has not produced any Disability Certificate from the competent authority, though he initially took treatment in the Government Hospital, Nizamabad, and that the Commissioner for Workmen's Compensation, after considering the oral and documentary evidence, rightly granted just and reasonable compensation and therefore, the said finding needs no interference and prayed the Court to dismiss the appeal.

13. Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

1. Whether the compensation awarded by the Commissioner for Workmen's Compensation is just and reasonable?
2. Whether the appellant-applicant is entitled for enhancement of compensation as prayed for?

14. POINTS: A perusal of the evidence of PW.1 shows that he was working as labourer under Opposite Party No.1 on the

Lorry bearing registration No.ABT 1417 since two months prior to the accident. On 11.07.2003, while he along with other labourers during the course of employment under the instructions of Opposite Party No.1 went to Mamidipalli stone machine and loaded the stone, while coming to Nizamabad at about 7.45 P.M. when the vehicle reached near Chinnapur Gandhi crossing, while overtaking one car the driver applied sudden brake, due to which the vehicle was uncontrolled and turned turtle in a ditch. Due to which, the applicant and other labourers, cleaner and driver received fracture injuries. PW.1 also stated that he received fracture injuries on his right leg, left knee, right wrist, injuries on head, both legs, chest and other parts of the body. Immediately after the accident, he was shifted to the Government Hospital, Nizamabad, and thereafter referred to Hyderabad for better treatment, but he was admitted in Dr. Narsing Rao's Hospital, Nizamabad and thereafter taking Ayurvedic treatment at Pitlam. The Police, Makloor registered a case in F.I.R. No.103/2003.

15. Opposite Party No.1 gave evidence as RW1 and according to him, the applicant was working on his lorry on a monthly salary of Rs.4,000/- and he used to pay the batta of Rs.10/- per day. He also admitted about the accident and stated that the said accident occurred during the course of employment under him. He further stated that in the accident the applicant received fracture injuries.

16. PW2 is the Doctor, who treated the applicant in the Government Hospital, Nizamabad. According to him, the applicant received fracture injuries, which are grievous in nature, and also one simple injury. He also stated that those injuries may be possible in a motor vehicle accident. He issued Ex.A7-Disability Certificate and assessed the disability at 70%, which is permanent partial disability, and loss of earning capacity at 70% due to malunited fracture of right leg, malunited fracture lower end of femur left and malunited fracture of radius right. PW2-Doctor in his evidence stated that the applicant received 70% permanent partial disability and issued Ex.A7-Disability Certificate. The said certificate was not issued by the Medical Board, constituted by the Government Hospital, Nizamabad. Though there is a Medical Board in the said Hospital, the applicant was not referred and not present before the said Board and obtained the Disability Certificate. PW2 in his evidence has not specifically stated that what type of tests he has undertaken while issuing Disability Certificate and the said certificate was issued about 10 months after the accident and therefore, the Commissioner for Workmen's Compensation has rightly held that PW2-Doctor fixed the disability with abnormal percentage and the Commissioner for Workmen's Compensation has rightly reduced the loss of earning capacity to 45%.

17. RW2 was working as Senior Assistant in the Insurance Company. In his evidence, he stated that the Insurance Company is not liable to pay any compensation and admitted about the issuance of Insurance Policy.

18. Though the Insurance Company denied the accident and the relationship of applicant with Opposite Party No.1, but no contra evidence was produced. Therefore, as per the evidence of Opposite Party No.1, there is no dispute that the accident occurred during the course of employment and the applicant was a workman under the Opposite Party No.1 and during the employment the applicant received injuries, which are in the nature of partial permanent disability.

19. Though RW1 in his evidence stated that he was paying monthly salary of Rs.4,000/- and batta of Rs.10/- per day and issued Ex.A8-Salary Certificate, to support the said certificate Opposite Party No.1 has not produced any documentary proof to show that what is the basis for issuing Ex.A8-Salary Certificate, and no record was produced by him. Therefore, the salary of applicant can be fixed @ Rs.2,500/- per month prevailing during the course of employment. The age of applicant and the disability were rightly taken by the Commissioner for Workmen's Compensation. In view of the

above, the appellant is entitled to the following amount of compensation:

Monthly wages of the appellant	Rs.2,500/-
Age of the appellant	22 years
Loss of earning capacity	45%
Relevant age factor	221.37
Compensation	60% of the wages X relevant age factor X percentage of loss of earning capacity = $2500 \times 60/100 \times 221.37 \times 45/100 = \text{Rs.}1,49,424.75$ ps rounded to Rs.1,49,425/-

In the result, the appeal is partly allowed by enhancing the compensation awarded by the Commissioner for Workmen's Compensation to the appellant-claimant from Rs.1,07,586/- to Rs.1,49,425/- (Rupees One lakh forty nine thousand four hundred and twenty five only) with interest at the rate of 12% per annum from the date of application till realization. No order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

ANIS, J

06.01.2017
MVA