

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.1463 OF 2004

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred under Section 30 of the Workmen's Compensation Act, 1923 (for short 'WC Act'), requesting to award compensation of Rs.3,82,869/- on the ground that the amount of Rs.1,17,131/- awarded by the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Nizamabad, by the award dated 12.03.2004 in W.C. No.207 of 2003 NF, is very meagre, and the same is without any basis, as it discarded monthly wages of Rs.5,000/- drawn by the applicant and instead taken Rs.1,800/- as monthly wages. The other ground is that interest was not at all awarded from the date of accident.

2. Heard Sri K. M. Mahender Reddy, learned counsel for the applicant, and Sri R. Venkat Rao, learned Counsel for respondent No.2 viz., National Insurance Company Limited, Nizamabad.

3. The appeal against respondent No.1, who is owner of the Jeep bearing No.AP-25-U-283 that involved in the accident and incidentally employer of the applicant, was dismissed for non-compliance of the order of this Court dated 15.12.2015.

4. The learned counsel for the applicant would place reliance on Explanation II to Section 4(1)(c) of the WC Act, but the said explanation comes into vogue only when the applicant is able to prove that he was drawing monthly wages more than Rs.5,000/-.

5. The learned Commissioner having discussed the evidence of PWs.1 and 2, did not believe the stand of the applicant that he was paid a monthly wage of Rs.5,000/- as no documentary proof is forthcoming except Ex.A-5 - salary certificate of the applicant, which is not proved by examining the employer, who is respondent No.1 in the W.C. and also respondent No.1 herein. He has, therefore, taken monthly wage at Rs.1,800/- and loss of earning capacity at 50% as spoken to by PW.2, the doctor, as against 65% partial permanent disability sustained by the applicant.

6. Now the points that arise for consideration are (1) whether the applicant is able to prove that he was drawing wages at Rs.5,000/- per month as claimed? and (2) whether he is entitled to any interest?

7. So far as first point is concerned, except marking Ex.A-5, salary certificate said to have issued by the employer, the applicant has not taken out summons to examine him (employer). Even otherwise, no other document was filed to show that he was drawing Rs.5,000/- per month. In such an event, the monthly wage taken by the lower authority at Rs.1,800/-, cannot be faulted.

8. So far as percentage of disability is concerned, the loss of earning capacity was arrived at by the authority at 50% though, loss of earning capacity spoken to by PW.2, Dr. T. Narsing Rao, was 70%. It is no doubt true, the authority mentioned that the doctor has exaggerated the disability suffered by the applicant on the ground that PW.2 has not mentioned in his evidence as to what type of tests he has undertaken while issuing disability certificate and the disability certificate was issued one year after the accident, but, it has come up in deciding the cases under Motor Vehicles Act, 1988, that PW.2 and another doctor from Nizamabad District were in the habit of issuing disability certificates by inflating the partial permanent disability and, therefore, their evidence is being discarded. The same would apply even to the matters under W.C. Act. Therefore, the percentage of disability taken by the authority at 50% cannot be faulted, more particularly, since PW.2 has not spoken to the details as to how he has assessed the same at 70%. In fact, the relevant details are not forthcoming in the disability certificate issued by him which is marked as Ex.A-4 i.e., restriction of movements to the injured limb and what was the scale applied by him in assessing the disability.

9. So far as interest is concerned, the learned Commissioner has not granted the same. The applicant is entitled to interest at 12% per annum from the date of taking place of the accident till realisation in view of the ruling of the Hon'ble Supreme Court in **The Oriental**

Insurance Company v. Siby George¹. It would be better to refer to paragraph No.9, which is thus:

“9. The matter once again came up before the Court when by amendments introduced in the Act by Act No. 30 of 1995 the amount of compensation and the rate of interest were increased with effect from 15.9.1995. The question arose whether the increased amount of compensation and the rate of interest would apply also to cases in which the accident took place before 15.9.1995. A three Judge Bench of the Court in *Kerala State Electricity Board vs. Valsala K.*, AIR 1999 SC 3502 answered the question in the negative holding, on the authority of *Pratap Narain Singh Deo*, that the payment of compensation fell due on the date of the accident. In paragraphs 1, 2, and 3 of the decision the Court observed as follows:

“1.The neat question involved in these special leave petitions is whether the amendment of Sections 4 and 4A of the Workmen’s Compensation Act, 1923, made by Act No.30 of 1995 with effect from 15-9-1995, enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or permanent disablement resulting from an accident caused during the course of employment, took place prior to 15-9-1995?

2. Various High Courts in the country, while dealing with the claim for compensation under the Workmen’s Compensation Act have uniformly taken the view that the relevant date for determining the rights and liabilities of the parties is the date of the accident.

¹ (2014) 2 SCC 298

3. A four Judge Bench of this Court in *Pratap Narain Singh Deo v. Srinivas Sabata*, (1976) 1 SCC 289: (AIR 1976 SC 222: 1976 Lab IC 222) speaking through Singhal, J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim.”

10. Accordingly, the Civil Miscellaneous Appeal is allowed in part to the extent of awarding interest while maintaining the award in all other aspects. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand closed.

August 18, 2017.

PV

A. SHANKAR NARAYANA, J