

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.134 OF 2005

JUDGMENT:

The present appeal is preferred by the United India Insurance Company Limited being aggrieved by the order dated 10.07.2002, passed in W.C. No.98/97/NF on the file of the Commissioner for Workmen's Compensation at Nalgonda (for short, 'the Tribunal'), whereunder a sum of Rs.91,497/- was awarded as compensation, Rs.190/- towards costs and Rs.300/- towards advocate fee, thus, totalling to Rs.91,987/-.

2. Heard Sri V. Sambasiva Rao, the learned counsel for the appellant Insurance Company, and Sri Yallabandi Ramatirtha, the learned counsel for respondent No.1, and perused the material available on record. The appeal against respondent No.2, who is owner of Tractor-cum-Trailer, was dismissed for default vide Court Order, dated 2.1.2012, as he remained *ex parte* before the Tribunal.

3. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

4. The fact situation occurring in the instant case is, the applicant/labourer, working under the employment of opposite party No.1, filed an application under the provisions of Workmen's Compensation Act, 1923, claiming compensation of Rs.1,00,000/- (Rupees One lakh only) as he sustained injuries in a motor accident

that took place on 02.01.1997. On the said date, while the applicant was on duty as labourer on Tractor & Trailer bearing No.AP-L-5110 and 5111 respectively at about 3.00 p.m. when the said tractor transporting granite stones, near Lalayaguda stage, a lorry (tipper) came from behind the tractor and dashed the tractor. As a result, the applicant fell down and sustained fracture of three right ribs, fracture of right leg below knee, and serious injuries on mouth and four teeth broken and sustained multiple injuries all over the body. It is stated that by the date of the accident the applicant was earning wages at Rs.2,000/- per month and he was 45 years old. Since the accident occurred in the course of employment due to the negligence of the driver, and 2nd respondent, being insurer, the applicant filed W.C. No.98/97/NF claiming compensation of Rs.1,00,000/- (Rupees One lakh only).

5. The 1st opposite party, who is the owner of tractor-cum-trailer, remained *ex parte* before the Tribunal below. The 2nd opposite party – Insurance Company - filed a counter denying the material averments in the petition and also the manner in which the accident took place, injuries received and the expenditure incurred for treatment. Age of the applicant as 45 years and wages of the applicant at Rs.2,000/- per month are also denied and contending that the compensation claimed is highly exorbitant requests to dismiss the claim against the 2nd opposite party.

6. Basing on the above pleadings, the Tribunal below framed the following points:

- (1) Whether the applicant has met with an accident and sustained injuries in the course of his employment under OP-1 and whether the applicant suffered disability?
- (2) Whether the applicant is entitled to receive compensation as claimed or any part thereof, if so, to what quantum the applicant is entitled?
- (3) Whether the opposite parties are liable to pay compensation?

7. In support of the claim, the applicant himself examined as P.W.1 and got examined the Doctor as P.W.2, apart from marking Exs.A1 to A7. On behalf of the respondents, no oral evidence was adduced, except marking Ex.D1 – Insurance Policy.

8. The Tribunal, on appreciation of evidence of medical officer, who is examined as P.W.2, Ex.A2 wound certificate and Ex.A5 Disability Certificate, which reflected 45% permanent disability sustained by P.W.1 during course of employment as Labourer on Tractor & Trailer bearing No.AP-L-5110 and 5111 respectively, came to the conclusion that the loss of earning capacity suffered by the applicant due to the injuries sustained in an accident that occurred on 2.1.1997 during course of employment as Labourer, awarded Rs.91,497/- as compensation, a sum of Rs.190/- towards costs and a sum of Rs.300/- towards advocate fee, thus, totaling to Rs.91,987/-.

9. Aggrieved over the same, the present Civil Miscellaneous Appeal is preferred questioning the order granting Rs.1,88,387/-. His

main submission is that, though, the Doctor has given percentage of disability of 40%, the Tribunal calculated the compensation taking into percentage of disability as 45%. Of course, it was resolved during the course of arguments that what is contained in the order wherever permanent disability was referred to mentioned as 45% and somehow, in the typed copy according to the learned Standing Counsel for the appellant, it is shown as 40%. The learned Standing Counsel would agree with the order in the Court record to the effect that the petitioner sustained 45% permanent disability.

10. The point that arises for consideration is whether the accident occurred due to rash and negligent driving of crime vehicle, and whether the compensation of Rs.91,497/-, a sum of Rs.190/- towards costs and Rs.300/- towards advocate fee, thus totaling to Rs.91,987/- awarded by the Tribunal is reasonable, just and fair.

11. The following substantial questions of law formulated by the appellant in the grounds of appeal, which read thus:

- (1) Interpretation of document is a point of law.
- (2) Non-consideration of the contents of the documents leads to perversity in the interpretation of documents.
- (3) Discrepancies in documents and their consideration is a point of law.

12. Admittedly, the appellant has not let in evidence except marking copy of Insurance Policy, but on consent. So, the Commissioner rightly observed that in the absence of rebuttal

evidence to the evidence let in by the petitioner in W.C. No.98/97/NF, his evidence cannot be discarded and that has been the reason the age of the applicant was taken as 45 years and the permanent disability at 45% and wages at Rs.2,000/- per month, for the purpose of calculating and worked out compensation thus:

$$\text{Rs.2000} \times \frac{60}{1000} \times \frac{45}{100} \times 169.44 = \text{Rs.91,497/-}$$

13. The medical proof as regards the percentage of disability assessed by the medical officer was the basis for the authority to arrive at a definite conclusion and certainly not just based on its own perception.

14. The observations made by the authority as mentioned cannot just be brushed aside in view of the fact that the applicant sustained fractures and consequently he was disabled permanently.

15. There are no merits in the present Civil Miscellaneous Appeal, and, accordingly, the same is dismissed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 11.08.2017
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