

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A. No.900 of 2004

JUDGMENT:

Aggrieved by the order dated 31.12.2003 in W.C.Case No.137 of 2001 (NF) passed by the Assistant Commissioner of Labour, Nizamabad the applicant preferred the present appeal.

2) The factual matrix of the case is thus:

a) The applicant—Jandla Kistaiah working as labourer in lorry bearing No.AP 25 T 8811 of Opposite Party No.1. On 28.06.2000 at about 8.00 PM, when he along with others was proceeding in the lorry towards Nizamabad for loading and unloading sand, on the way near Mamidipally village sivar on NH No.16, the driver drove the vehicle in a rash and negligent manner and dashed another lorry coming from opposite direction, due to which he sustained fracture injuries to his right leg and left wrist; immediately he was shifted to Government Hospital, Nizamabad for treatment. It is averred that accident was occurred due to rash and negligent driving of lorry driver. On these pleas, the applicant filed W.C.Case No.137 of 2001 against opposite parties 1 and 2 who are owner and insurer of the offending Lorry and claimed Rs.2,00,000/- as compensation.

b) PWs.1 and 2 were examined and Exs.A1 to A6 were marked on behalf of applicant and RW1 was examined and Exs.B1 to B3 were marked on behalf of opposite parties.

c) The lower Tribunal on appreciation of both oral and documentary evidence observed that applicant was a labourer employed by Opposite Party No.1 and he suffered permanent partial disability in the accident arising out of and during the course of employment and also observed, Opposite Party No.1 had valid insurance policy on the date of accident and therefore, Opposite Parties 1 and 2 were liable to pay compensation and accordingly awarded Rs.1,01,078/- towards compensation. Aggrieved, the applicant preferred the instant appeal seeking enhancement of compensation.

3) Heard arguments of Sri K.Sarala Mahendar Reddy, learned counsel for appellant and Sri R.Venkat Rao, learned counsel for R2/Oriental Insurance Company Limited. Appeal against R1 dismissed for default vide Court order dated 18.03.2016.

4a) The argument of learned counsel for appellant is two fold. Firstly, he would argue that the lower Tribunal grossly erred in accepting the disability at 45% instead of 70% as certified by PW2—doctor. He argued that considering the fact that petitioner is a labourer and the physical disability in his right leg and left wrist would adversely affect his earning capacity, the Tribunal ought to have accepted the functional disability at 70% and granted compensation accordingly.

b) Nextly, he would argue the Tribunal erred in not granting interest as per Section 4A of the Workmen's Compensation Act, 1923 (for short “WC Act”). He thus prayed to allow the appeal and enhance the compensation suitably.

5) Per contra, while supporting the order of the lower Tribunal, learned counsel for R2/Insurance Company would argue PW2 was not the doctor who treated the petitioner and he exaggerated the disability and therefore, the Tribunal rightly fixed his disability at 45%. Learned counsel would further argue petitioner does not deserve interest. He thus prayed to dismiss the appeal.

6) In the light of above rival arguments, the point for determination is:

“Whether the compensation awarded by the lower Tribunal is just and reasonable or needs enhancement?”

7) **POINT:** As can be seen, the petitioner suffered fracture to both bones of his right leg and also fracture to lower end of radius of left wrist in the accident for which he took treatment. PW2 on examination of the petitioner issued Ex.A4—disability certificate. He stated that he examined the petitioner clinically and obtained X-ray and found malunited fracture of both bones of right leg and malunited fracture of lower end of radius and accordingly assessed his disability as 65%. He stated that functional disability of the petitioner is also in between 65% to 70%. The Tribunal observed that PW2 has

not stated what type of tests he has conducted while issuing disability certificate. On this observation it opined that the disability certified by him two years after the accident was at an abnormal percentage and accordingly fixed the disability at 45%. In my considered view, the Tribunal committed an error in appreciation of evidence of PW2. It is not as though PW2 did not state what type of tests were conducted before issuing disability certificate. On the other hand, he deposed that he examined the petitioner clinically and obtained X-ray and thereupon opined malunited fracture of both bones of right leg and malunited fracture of lower end of radius resulted in 65% permanent partial disability. Therefore, it is clear that the doctor on physical examination of the petitioner and upon taking X-ray gave his opinion. Therefore, the Tribunal was not right in observing that the doctor has not specified what type of tests were conducted. Therefore, the physical disability certified by PW2 cannot be doubted.

In *Raj Kumar vs. Ajay Kumar*¹ the Apex Court observed that when the medical witness suggests physical disability with reference to whole body, the Court has to assess the functional disability basing on the avocation of the victim prior to the accident. In the present case, the petitioner was admittedly a labourer. Having regard to the nature of his avocation, it can be said, the physical disability to his right leg as well as his left hand will affect his earning capacity adversely. In my considered view, the disability accepted by the

¹ 2011 ACJ 1 (SC)

Tribunal appears to be on lower side. Since the petitioner suffered disability in the prime of his youth i.e. when he was at 30 years of age, his functional disability is accepted at 55%. Consequently, compensation for loss of earning power comes to Rs.1,23,540/- (Rs.1,800 x 60% x 207.98 x 55%).

Thus, the compensation is increased by Rs.22,462/- (Rs.1,23,540/- minus Rs.1,01,078/-)

Then coming to interest, as per Section 4A of WC Act petitioner is entitled to interest @ 12% per annum.

8) In the result, this appeal is partly allowed with costs and compensation is enhanced from Rs.1,01,078/- to Rs.1,23,540/- with interest @ 12% per annum from the date of claim petition till the date of realization.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 04.10.2017
Murthy