

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

CMA No. 755 of 2007

ORDER:

This is an appeal filed against the order dated 10.07.2007 in WC.No.210 of 2004 passed by the Commissioner of Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad.

The applicant before the lower Court is a Driver of the lorry bearing No.12 U 4885. The said lorry belongs to opposite party No.1 and is insured with opposite party No.2. The case of the applicant is that while he was driving the lorry, on 31.08.2004 in Gujarat he met with an accident and sustained grievous injuries. Claiming that the accident occurred during and in the course of employment, the present application was filed seeking compensation of Rs.5,00,000/- from both opposite party Nos.1 and 2. Opposite party No.1 remained *ex parte* and opposite party No.2 filed counter denying the entire accident and what all stated in the claim petition.

The applicant was examined as AW.1 and on his behalf, Exs.A.1 to A.10 were marked. He also examined one Doctor-AW.2, who assessed his physical disability and also the loss of earning capacity. On behalf of the opposite party No.2, no one was examined and Ex.B.1-the copy of insurance policy

was marked. After assessing the evidence, the Commissioner came to a conclusion that the accident occurred during and in the course of employment and he directed opposite party Nos.1 and 2 to pay compensation of Rs.3,63,027/-. The same is assailed in the current appeal.

Heard Sri M.Jeevan Reddy learned counsel for the appellant. There is no representation for the respondents.

It is the contention of the learned counsel for the appellant that there is delay in lodging FIR; the compensation awarded is too high; and that the Doctor's evidence should not have been taken into consideration.

As far as the delay of lodging of FIR is concerned, that by itself is not fatal to the case. It is also important to note that there is no cross-examination of the witness or the delay of lodging of the FIR etc. Assuming that there is a delay, this Court is of the opinion that as per the evidence of AW.1, the accident occurred on 31.08.2004 at about 10:30 p.m. whereas, the statement is recorded on 01.09.2004 at 00.30 hours. Therefore, there is no great delay in lodging of FIR. Even otherwise, the cross-examination clearly suggests that the accident occurred at that point of time only. Therefore, the first ground urged by the learned counsel for the appellant is not very serious in this case.

The second and third questions that are argued are interlinked. The applicant filed Ex.A.3-Doctor's disability

certificate, which shows that the disability in the opinion of the Doctor is 40% as per Mc.Bride's Scale. The Doctor also certifies that the loss of earning capacity is 100% and that he cannot drive a vehicle and requires further operation. The Doctor gave evidence in chief-examination in December, 2006. The cross-examination was in February, 2007. The Doctor deposed that he followed a scientific method before issuing Ex.A.3. The Doctor also deposed that further operation is necessary for removing the implants. He also deposed that the disability will not be reduced even after the removal of the implants. The certificate of the Doctor in column No.11 is crystal clear and he stated that the applicant cannot drive a vehicle any more. The same is also clear from the chief-examination of AW.1, wherein he clearly stated that he cannot sit and squat normally as prior to the accident. Being a driver, he cannot drive a vehicle. The applicant also in his chief-examination clearly deposed that after the accident, he was removed from service as he is unfit to driver work. There is no cross-examination on this removal from his work. No question is posed to the applicant to the effect that he is continuing to work as a driver etc. There are general suggestions to the effect that he can continue to drive the vehicle. The medical record filed in this case including the reports from a hospital in Bardoli and the reports of Udai Clinic, Hyderabad show that the applicant was treated over a period of time. The evidence of the Doctor is also clear.

In the impugned order, the Commissioner clearly noted in paragraph 19 that the loss of earning capacity has to be assessed considering the nature of the job he was doing. The Commissioner also noticed in paragraph 12 that driving a vehicle can mean effective driving only. He also stated that in the interest of the safety of the applicant and the safety of the public at large, the applicant cannot be allowed to drive a vehicle in future. Therefore, he held that the driver was incapacitated from doing the job that he was doing at that point of time. The Commissioner considered Section 2(1) (l) of the Workmen's Compensation Act, 1923 (for short 'the Act') wherein it is held clearly that total disablement means disablement that incapacitates a workman for all the work he is doing at the point of accident. Thereafter, the Commissioner referred to Section 4(1) (b) of the Act also.

The order of the lower Court is, thus, a clear and a reasoned order, which has considered the legal and factual aspects before coming to a conclusion. This Court does not find any reason to interfere with the order in this case. During the course of submissions also nothing was pointed out to interfere in this case.

Therefore, for all these reasons, this Court is of the opinion that the order in question cannot be interfered with and holds that there are no grounds to interfere.

In the result, the appeal is dismissed. No order as to costs.

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

D.V.S.S. SOMAYAJULU, J

Date: 13.12.2017
KLP

