

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

CMA No.678 of 2006

ORDER:

This is an appeal filed by the Insurance Company against the order dated 31.01.2005 in WC.Case.No.58 of 2004 on the file of the Commissioner for Workmen's Compensation, Eluru.

The case of the complainant is that he sustained an injury during the course of employment while he was driving the vehicle belonging to the opposite party No.1, which is a Tata Sumo No.AP 37V 6664. The accident occurred on 22.05.2003. Claiming that the injury resulted in loss of earning capacity, he filed the present application before the Commissioner for Workmen's Compensation, Eluru. Opposite party No.2 filed a counter but opposite party No.1 did not choose to contest the matter. Learned Commissioner examined the applicant as the sole witness and marked Exs.A.1 to A.6. On behalf of the opposite party No.2, Ex.B.1 was marked, which was the copy of insurance policy. After considering the evidence, the Commissioner came to a conclusion that the applicant is entitled to compensation of Rs.2,88,116/- and directed that the same should be paid by opposite party Nos.1 and 2. It is this order that is challenged before this Court.

Heard Sri P.Harinath Guptha for the appellant and Sri I.Gopal Reddy for respondent No.1.

The essential grounds that are urged in the appeal are that the assessment of compensation is excessive and that the Doctor, who gave the Disability Certificate, was not examined and therefore, in the absence of proof of the Medical Certificate, the loss of earning capacity or the disability should not have taken to be proved. Consequently, learned counsel argued that the fixation of compensation is excessive and wrong.

In reply, the learned counsel for the respondent argued that the impugned order is a reasoned order passed after considering the facts and circumstances. It is also argued that the Disability Certificate is validly proved and that the Commissioner took a correct view. It was also argued that the Workmen's Compensation Act, 1923 is a beneficial legislation and as such there is no error in the order.

It is a fact that the Workmen's Compensation Act, 1923 is a beneficial legislation, but at the same time, it cannot be lost track of the fact that the Commissioner is exercising quasi judicial functions and is an authority empowered to receive evidence and pass orders which are executable also. Although the rigor of Civil Procedure Code and Evidence Act are not applicable, still, the Commissioner for Workmen's Compensation should not lose track of the fact that he is exercising quasi judicial functions.

Ex.A.2 is the Wound Certificate, which is of importance. It shows that there is an injury on the wrist of the applicant

and it is written in the Wound Certificate that the same is 'grievous' in nature. The Disability Certificate, on the other hand, which is marked as Ex.A.6, shows that there is a restricted right wrist moment and the disability is assessed as 45%. However, just above the signature, the words "purely temporary" were also written. This important piece of evidence has been overlooked by the Commissioner. It is also pertinent to note that in the counter filed by the opposite party No.2, they have clearly denied the accident and injury and the fact that the applicant is suffering any disability. In the cross-examination, a suggestion was also put that Ex.A.6 is fabricated. Despite this, no Doctor was examined to prove the disability. The Medical Certificate was also containing atleast three or four different handwritings in blue, black and green inks. The date is corrected and there is clear overwriting on the month and date also on the top of the certificate. Therefore, it is not clear when the certificate was issued. Even in the rubber stamp/seal that is put, the date is left blank. The Commissioner ignored all these aspects and came to a conclusion that the applicant sustained grievous injury and proceeded to award compensation.

As held by this Court in ***United India Insurance Co., Ltd., v. S.K.RAzak and another***¹; though ordinarily, the opinion of a Doctor has a high persuasive evidentiary value, the Tribunal cannot accept every such opinion as gospel. It

¹ 2015 (4) ALD 291

has to carefully examine the nature of injuries and evaluate the opinion of the Doctor. If the opinion of the Doctor looks so absurd having regard to the nature of injuries even to a layman, such opinion is liable to be rejected, albeit, by assigning sound reasons therefor.

As stated earlier in this order, the Commissioner for Workmen's Compensation lost sight of the fact that the assessment of medical disability will have to be done by a Doctor and the injury is not a scheduled injury. It is for this reason only that the Act provides that in case of non scheduled injuries, the compensation payable or the loss of earning capacity determined should be assessed by a qualified medical practitioner. When a certificate of such doubtful quality is brought before the Commissioner and a suggestion is made that the same is created for the purpose of the suit, the Commissioner should have exercised greater care in relying upon the same.

The learned counsel for the Insurance Company/ appellant is right in pointing out that the compensation is excessive and it is fixed without considering the true worth of Ex.A.6. The Doctor, who has signed Ex.A.6, should have examined before any reliance was placed on the said certificate. Even the appendix of evidence does not show that the disability certificate has a specific date.

The alternate submission made is that the assessment of loss of earning capacity was wrong, because the workman

did not introduce any evidence to show that he was incapacitated in any manner from carrying out his present job or any future job. The disability in this case is only with regard to an injury on the right wrist. Therefore, learned counsel pointed out that the assessment of compensation is excessive and wrong.

This Court is also of the opinion that the Commissioner erred in relying upon the document like Ex.A.6, which was not validly proved. The principles of evidence require that the contents of the document should be proved. Although standard of evidence before the Commissioner is not as high as in a Court, the basic principles of law require some proof of the contents.

In this case, the documents, particularly the Disability Certificate suffers from serious infirmities. Therefore, the Commissioner was wrong in relying upon the same in assessing the loss of earning capacity.

For all these reasons, this Court is of the opinion that the order of the lower Court is erroneous and the same is, therefore, set aside.

In the result the appeal is allowed. No order as to costs.

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

D.V.S.S. SOMAYAJULU, J

Date: 16.11.2017
KLP