

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

CIVIL MISCELLANEOUS APPEAL No.1067 OF 2006

JUDGMENT:

This is an appeal filed against the order dated 04.09.2006 in W.C.No.134 of 2005 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Hyderabad.

The brief facts of the case are that the applicant in the lower Court claimed compensation for the loss of earning capacity suffered by him due to the employment injuries sustained in an accident as a driver on an auto bearing No.AP36U 5090 before the Commissioner for Workmen's Compensation against the employer of the applicant/owner of the subject auto; the previous owner of the subject auto and also against the insurer of the subject auto.

The 1st and 2nd opposite parties did not appear and they were set ex parte. The 3rd party filed a counter denying all the averments made in the application except those, which are specifically admitted and wanted all of them to be put to strict proof. After the pleadings were completed, evidence was taken. The applicant examined himself as A.W.1 and he also examined Dr.S.Vasudev Rao, Civil Surgeon, Specialist Orthopaedics, Golconda Area Hospital, Hyderabad as A.W.2. On behalf of the 3rd opposite party, R.W.1 was examined. Exs.A.1 to A.9 were marked for the applicant while Exs.B.1 to B.3 were marked for the 3rd opposite party.

The Commissioner for Workmen's Compensation, after assessing the evidence, came to a conclusion that the 1st and 3rd opposite parties are jointly and severally liable to pay compensation amounting to Rs.1,51,203/- together with stamp fee of Rs.304/- and advocate fee of Rs.500/- totaling to Rs.1,52,007/- to the applicant. This order is now being assailed in the appeal.

Heard Sri C.Prakash Reddy, learned counsel for the appellant and Sri C.S.K.Reddy, learned counsel for the respondent No.1.

The essential point urged by the learned counsel for the appellant is the question of law number 3 in the grounds of appeal. The learned counsel argued that there is no employer employee relationship between the appellant and the owner. He argued that as the witness A.W.1 admitted in his cross-examination that he was spending the money for petrol and repairs are being met by the 1st opposite party; it makes it clear that the injured was running the auto on hire basis. A perusal of the cross-examination reveals that immediately after the admission relied upon by the learned counsel, the witness deposed as follows: "It is not true to suggest that I am running the auto on rental basis". There is no other evidence on this issue. Therefore, if the entire evidence is read as it should be, it does not lead to a conclusion that the auto in question was being run on a rental basis. Further cross-examination of A.W.1 would have helped but there was

no further cross-examination on the issue of rental basis. Solely on the basis that the applicant stated he was paying for the petrol, it cannot be concluded that the auto was on a rental basis; more so when interpreting a legislation/enactment which meant to be employee/workman friendly.

The second point urged is about the assessment of loss of earning capacity vis-a-vis the physical disability. The learned counsel submits that the assessment is higher than the Doctor's own assessment. The doctor A.W.2 assess the loss of physical disability at 30% and the loss of earning capacity @ 100% as a driver. There is no cross-examination by the counsel for 3rd opposite party why the assessment is high; nor was any other question put to A.W.2 that he was unable to perform all other jobs also. Even when A.W.1 was cross-examined there were only suggestions and no direct cross-examination on his inability to perform the job as auto driver or his inability to earn any other livelihood. The Commissioner in his impugned order also did not grant loss of earning capacity as 100% and in fact reduced it to 50% only. Therefore, this Court feels that this is a reasonable assessment and cannot be faulted with.

On other issues namely, age, the same was taken from the driving licence while the salary was based on the minimum wages payable as per G.O.M.S.No.30, dated 27.07.2000 and not as claimed. The other legal issues

argued after these were also considered by the lower Court and decided based upon the case law as can be seen from paras 24 and 25 of the impugned order. Nothing to the contrary (case law or facts) was submitted during the hearing of the appeal.

For all these reasons, the appeal is dismissed confirming the order of the lower Court. No order as to costs.

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

Date : 06.12.2017
ssp

D.V.S.S.SOMAYAJULU, J

