

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

CMA No. 446 of 2006

ORDER:

This is an appeal filed against the order dated 15.01.2006 in W.C.No.58 of 2005 passed by the Commissioner for Workmen's Compensation, Visakhapatnam.

The brief facts of the case are that the applicant in the lower Court sustained a grievous injury and his hand was crushed in a moving belt and was amputated totally. Immediately after accident, he was rushed to a hospital and there the right hand was re-attached to the limb. The applicant states that the Medical Board, Visakhapatnam assessed the loss of earning capacity as 90%, which is permanent. Therefore, claiming compensation on that ground, the present application was filed before the Commissioner for Workmen's Compensation.

The opposite party filed a counter denying that the applicant was a regular employee and denying the entire accident. After the pleadings were completed, evidence was taken. For the applicant, he himself examined as AW.1 and on behalf of the respondent, four witnesses were examined. Exs.A.1 to A.4 were marked for the applicant while Exs.M.1 to M.3 were marked for the respondent.

The Commissioner for Workmen's Compensation, after assessing the evidence, came to a conclusion that the loss of

earning capacity is 100%. He assessed wages on the basis of the Minimum Wages Act and age was assessed as a 28 years as per Ex.A.4. The loss of earning capacity was assessed as 100% and thereafter, compensation of Rs.3,41,067/- was awarded. This order is now being assailed in the appeal.

Heard Sri Nimmagadda Satyanarayana, learned counsel for the appellant and Sri Y.V.Ravi Prasad, learned counsel for the respondents.

It is the case of the appellant that as stated in ground No.4, the workman was not allocated to work along with the running belt and that therefore, the opposite party is not liable. However, the first witness for the respondent states to the contrary. He states that he is the supervisor for the work. In page 2, para 2, he clearly admits in his chief-examination itself that on 10.02.2001, the applicant was deployed for the work of clearing the jammed metal under the belt with the help of shovel. Therefore, from this admission, in the chief-examination itself, it is clear that the employee was deployed for the work and the accident occurred at that place. Therefore, the opposite party cannot deny that the applicant was not an employee or that he was not deployed to a particular spot. Even if he is a casual employee of the respondent, the provisions of the Workmen Compensation Act, 1923 (for short 'the Act') are applicable. The definition of "workmen" has been amended in the year 2000 and the words "other than the person whose employment of a casual

nature and who is employed otherwise than for a business of the employer” has been deliberately eliminated by the legislature. Therefore, it is clear that the applicant is a workman.

The next pointed urged is assessment of compensation was wrong. In this case, the assessment of compensation is based on the fact that the entire hand of the applicant was the cut/severed and Medical Board clearly assessed that the percentage of disability is 90%. A labourer without a hand is incapacitated from carrying out other employment. He clearly states that he was thrown out of his job as he is found to be unfit for his employment. Therefore, this Court is of the opinion that the assessment of the disability is keeping in view the percentage of loss of earning capacity only and cannot really be faulted.

The discharge sheet issued by the hospital itself clearly speaks of the amputation of the right arm at the middle level and that the arm was brought in a plastic bag without cooling. Later, the amputated limb was attached and most of the biceps and triceps were removed and the humerus was fixed with plates and screws. One grafting was also done. Therefore, the discharge summary itself shows the severity of the injury sustained.

The last ground urged is that the injured applicant and the respondent entered into an agreement by which the applicant was paid a sum of Rs.20,000/- as compensation. In

addition, the learned counsel pointed out that more than Rs.1,60,000/- spent for the medical treatment of the applicant. The expenditure incurred for treatment is not borne out of record and only a “bill” is filed in support of the Rs.1,85,828/-, but no proof is filed to show that the defined sum is in fact expended.

The last question that arises for consideration is whether the agreement by which Rs.20,000/- was agreed to be taken by the injured disentitles him to claim compensation. The learned counsel pointed out that there cannot be an agreement contrary to the terms of the statute and in this case, due to poverty of the applicant, he took a sum of Rs.20,000/-. Section 17 of the Act clearly prohibits contracting out.

This Court is also of the opinion that as the statute prescribes the compensation payable, there cannot be an agreement contrary to the statute. Therefore, the agreement that is entered into clearly does not preclude the claimant/applicant from claiming the compensation.

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.

D.V.S.S. SOMAYAJULU, J

Date: 29.11.2017
KLP