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

C.M.A.No.739 of 2006

JUDGMENT:

This appeal is filed by the Insurance Company/second respondent against the orders dated 26.06.2006 of the Commissioner for Workmen's Compensation, Nalgonda in W.C.No.54 of 2004.

The brief facts of the case are that the applicant was working as labourer in lorry bearing No.AP-7T-5324 under opposite party No.1 and he was being paid Rs.4,000/- per month. The case of the employee is that while he was on duty as a labourer, the lorry met with an accident and he sustained grievous injuries. He, therefore, claimed compensation to Rs.2,00,000/- along with interest and costs. Opposite Party No.1 did not file his counter. Opposite Party No.2/Insurance Company filed their counter and denied all the allegations.

The workman was examined as PW.1 and Exs.A.1 to A.9 were marked. On his behalf, Dr. V. Prashanth, Ortho Surgeon, who treated the injured, was examined as AW.2. On behalf of the Insurance Company, the Legal Assistant was examined and Exs.B.1 to B.3 were marked.

The Commissioner for Workmen's Compensation after considering the evidence on record came to a conclusion that the loss of earning capacity of workman was 40%. He assessed the wages by relying upon the provisions of Minimum Wages Act, as wages of the workman was not proved. Therefore, the Commissioner granted compensation of Rs.1,21,416/-. It is this order that is assailed in the present appeal.

Heard the learned standing counsel, Sri M. Jeevan Reddy, for the appellant/insurance company and Sri Chandrasekhar Reddy Gopi Reddy, for the first respondent.

The learned standing counsel for the appellant/insurance company argued that the compensation awarded is high and that the Commissioner did not exercise his judicial mind in awarding the compensation. He also stated that there is delay in lodging of the FIR, which was not considered by the Commissioner. The other point urged is that the additional premium is not paid on the insurance policy and that therefore, the policy does not cover the injured/applicant.

The applicant/first respondent, on the other hand, submitted that the impugned orders passed are correct and valid and therefore, there are no tenable grounds to set aside the same.

As mentioned earlier, Exs.A.1 to A.6 are the documents marked on behalf of the applicant of these Ex.A.1 is the F.I.R. The mere fact that the delay has occurred in lodging of the FIR should not be a ground to reject the same. It is also pertinent to state here that in the cross-examination of the applicant by the learned counsel for the opposite party No.1, there is no suggestion whatsoever let alone detailed cross-examination on the issue of the delay in lodging the FIR.

There is no cross-examination also on the aspect of the injured being a mere labourer travelling on the vehicle that day and that therefore, the insurance company does not cover the current accident. PW.2 was a Doctor who treated the injured. The Doctor stated that he examined the applicant and he sustained fracture of both the bones of his left leg. He was initially treated at the Government Headquarters Hospital, Nalgonda and later he was under treatment by the Doctor in question. According to this Doctor, the loss of earning capacity is only 50%.

The learned counsel for the appellant/insurance company argued that the fixing of the compensation is exorbitant and that the Commissioner has whimsically fixed the compensation. A reading of the impugned order shows that the Commissioner has assessed the loss of earning capacity only as 40%. The Doctor, on the other hand, assessed it as 50%. The Commissioner did not believe the same and came to a conclusion that there is loss of capacity is only 40%. I do not find any ground to hold that this is erroneous nor was any specific ground urged during the hearing.

The Hon'ble Supreme Court of India in a judgment reported in ***Yadava Kumar v. The Divisional Manager, National Insurance Company Limited***[1] held that the Court should strike a balance and that it should take a slightly broad based view rather than a niggardly view. Paras 16 &

[1] 2010(10) SCC 341

17 of the judgment of the Hon'ble Supreme Court of India, which are reproduced below are very relevant of this Court.

> **"16.** We are unable to agree with the aforesaid view of the High Court.
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> **17.** While assessing compensation in accident cases, the High Court or the Tribunal must take a reasonably compassionate view of things. It cannot be disputed that the appellant being a painter has to earn his livelihood by virtue of physical work. The nature of injuries which he admittedly suffered, and about which the evidence of PW-2 is quite adequate, amply demonstrates that carrying those injuries he is bound to suffer loss of earning capacity as a painter and a consequential loss of income is the natural outcome."

Therefore, this Court is of the opinion that there is no error in fixation of the compensation by the Commissioner for Workmen's Compensation.

Last submission of the learned counsel for the appellant/insurance company that survives for consideration is about the coverage by the insurance policy. Ex.A.9 is the copy of the insurance policy that was filed by the workman. The exemptions that are mentioned in this policy are that it will not apply for carrying passengers in the vehicle <u>except employees</u> (other than the driver) <u>not exceeding six</u> in number under the purview of the Workmen Compensation Act, 1923 (emphasis supplied). The Insurance Company filed Exs.B.1 to B.3. According to Ex.B.2, which is a note addressed from the branch office at Chilakaluripeta to TP Dept., Hyderabad DO-II (between the offices of the opposite party No.2) it has been clarified that there is no coverage by other workmen and collies. In page-2 of Ex.B.1, there is a hand written portion that "driver and cleaner alone" are covered. Based on this, the witness for insurance company deposed that the injured cannot be compensated and that opposite party No.2 was not liable to pay the compensation and according to him, the applicant was travelling in the lorry as unauthorized passenger. In the cross-examination, however, he admits that according to Ex.B.1, the policy covers driver, cleaner and one employee. Interestingly, the last line of the deposition in the cross-examination is to the following effect:

> "Ex.B-2 clarification certificate is prepared for this purpose".

Therefore, it is clear that the policy covers an employee, more so, under the Workmen Compensation Act. The handwritten portion "driver and cleaner" alone in page-2 of Ex.B.1 appears to be made for this case.

For all the above reasons, this Court is of the opinion that there are no grounds made out to interfere with the impugned order.

Accordingly, the Civil Miscellaneous Appeal is dismissed and the impugned order dated 26.06.2006 of the Commissioner for Workmen's Compensation at Nalgonda in W.C.No.54 of 2004 is hereby confirmed. However, there shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 10.11.2017
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