

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

CMA No.787 of 2006

ORDER:

This is an appeal filed against the order dated 26.03.2004 in WC.No.45 of 2003 of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Eluru.

In this case, the injured workmen himself is the appellant. He has filed the case against respondent No.1, who is the Driver of the lorry, which has caused the accident. Respondent No.2 is the owner of the lorry bearing number AP16 W 698 and respondent no.3 is the Insurance Company with whom this lorry was insured.

The case of the injured workmen is that while he was working as lorry cleaner on lorry bearing No.AP16 W 698, he sustained an injury on 29.04.2002. According to the workmen, the injuries that he has sustained were serious. He has pleaded that his wages are Rs.2,500/- per month and that he is entitled to be compensated by opposite parties 1,2 and 3 as he has sustained serious injuries in the course of his employment.

Opposite party No.3 has filed a detailed counter denying the age, wages and the compensation demanded. They have also denied that the accident took place and put the petitioner to strict proof thereof. The applicant himself was examined as AW.1. He also examined a doctor AW.2 and

Exs.A-1 to A-4 were marked. There is no oral evidence but Ex.B.1-insurance policy was marked by consent. After considering the oral and documentary evidence, the Commissioner Workmen's Compensation, Eluru came to the conclusion that the injury was serious and that the disability was 100%. He, therefore, assessed the compensation payable as Rs.2,46,924/-. It is this order that is assailed in this appeal.

Heard Sri I.Mammam Vani, learned counsel for the appellant and Sri K.Chidambaram learned counsel for the respondent.

The question that arises in this case is essentially about the nature of the accident and the disability.

It is the submission of the learned counsel for the appellant that the documents filed do not support that the injuries are grievous in nature and that the assessment of disability is, therefore, wrong.

The learned counsel pointed out that as per Ex.A.2, the injuries sustained by the appellant were a simple. As per Ex.A.4, the injury is shown as 30%.

The learned counsel also drew the attention of this Court to the oral evidence on the record. The worker was examined as AW.1. He merely reiterated what is stated in the complaint, but denied the fact that there is no serious injury to him. The Doctor, who is working as a Civil Assistant Surgeon and who was part of the Medical Board that issued

Ex.B.4, was examined as AW.1. He was cross-examined with regard to the initial assessment of injury as simple, but he did not give any cogent reasons for his assessment of damages. However, he clearly admits that “the injury mentioned in the wound certificate correlates to the disability mentioned in my certificate”. Therefore, from a reading of the cross-examination, it is clear that the Doctor agrees with the finding in Ex.A.2 that the injury is simple in nature. Despite this evidence, the Commissioner assessed the disability as permanent in nature and proceeded to award compensation.

There is considerable force in the submission of the learned counsel for the appellant.

The injury is classified as simple in the wound certificate. The Doctor, who was examined before the Commissioner, states that his assessment of disability corresponds to the wound certificate-Ex.A1. Therefore, if Exs.A.2 and A.4 are read together, it is clear that the injury sustained in this case is a simple injury and that consequently, the assessment of loss of earning capacity as 100% is not correct.

Learned counsel for the appellant also cited a case reported in ***National Insurance Company V. Mubasir Ahmed and another***¹ and drew the attention of this Court to para 8, which is to the following effect:

“Loss of earning capacity is, therefore, not a substitute for percentage of the physical

¹ (2007) 2 SCC 349

disablement. It is one of the factors taken into account. In the instant case the doctor who examined the claimant also noted about the functional disablement. In other words, the doctor had taken note of the relevant factors relating to loss of earning capacity. Without indicating any reason on basis the High Court held that there was 100% loss of earning capacity. Since no basis was indicated in support of the conclusion, same cannot be maintained. Therefore, we set aside that part of the High Court's order and restore that of the Commissioner, in view of the fact the situation"

For the above reasons, this appeal is allowed and the matter is remanded back to the Commissioner for Workmen's Compensation, Eluru to assess the compensation in the light of the evidence on record and the settled legal principles particularly the conclusions in para 26 of the judgment of the learned single Judge in ***N.Sree Ramulu @ Sree Rama Murthy v. B.Lakshmi Narayana and another***². In the circumstances of the case, no costs.

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

D.V.S.S. SOMAYAJULU, J

Date:13.11.2017
KLP

² 2013 (5) ALD 249