

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2978 OF 2004

JUDGMENT:

Heard Sri V. Sambasiva Rao, learned standing counsel for the appellant - The United India Insurance Company Limited, and Sri M. Krishna Reddy, learned counsel for respondent No.1 - applicant.

2. The present appeal is preferred by opposite party - II, insurance company, in W.C. No.61 of 2003, mainly questioning that 100% disability construed by the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour - III, Hyderabad, by the order dated 15.03.2004.

3. The medical officer was examined as PW.2 and RW.1 did assert disability as 45% and 25% respectively, to the upper limb which was affected with surgical intervention on account of the injuries sustained in a road accident. The other aspects are not in dispute.

4. The learned standing counsel would submit that in fact, the applicant having laid the claim under the provisions of Motor Vehicles Act, 1988, claimed only Rs.70,000/- towards compensation, but, having withdrew it, filed the present claim under Workmen Compensation; this is the first ground raised in requiring to upset the order under challenge. The second ground is that the doctor examined on behalf of the applicant as AW.2 has asserted that the disability as

45% only. According to the learned standing counsel, the doctor examined on behalf of the appellant - insurance company as RW.1 asserted 25% disability and, thus, there has been inconsistency in regard to disability asserted by the doctors. It is his submission that the learned Commissioner, somehow, strangely took 100% loss of earning capacity or loss of power and, thus, he attacks the order passed by the learned Commissioner.

5. The learned counsel for respondent No.1 - applicant strongly supports the order passed by the learned Commissioner contending that the percentage of disability though, is 25% or 45%, as the case may be, there has been unanimity between the doctors that there has been disability suffered by the applicant and since he is driver of heavy motor vehicle, any percentage of disability would certainly affects his profession, though, he is fit, and, therefore, the Commissioner assessed 100% disability so far as occupation of the disability is concerned.

6. The learned standing counsel would submit that it is not the case of the applicant that he was removed from employment by the owner of the vehicle and, therefore, keeping in view, the evidence of RW.1, that the disability can only be fixed at 25% and when viewed, thus, the learned Commissioner did not properly appreciate the evidence on record and, therefore, the order warrants interference.

7. Perused the order of the commissioner and the evidence on record.

8. It is true, what has been contended by the rival sides, learned standing counsel for the insurance company - appellant and the learned counsel for the applicant, as regards the doctors varying the disability and RW.1 even denied the suggestion given to him that it is only 45%. But, one thing is certain, keeping in view, the profession of the applicant as he is driver of a heavy vehicle, which is not disputed, when kept in view, the nature of injury, certainly, the disability taken by the learned Commissioner as 100% cannot be doubted.

9. Now looking at the nature of injury, the description of injury is to be found in paragraph No.8 and again in paragraph No.15 in the evidence of AW.2; that too what has been told by him in his cross-examination, when the learned standing counsel for the appellant - opposite party 2 cross-examined him. It is clear that he sustained fracture of ulna, fracture of radius right and dislocation of right wrist and shifted to Osmania General Hospital, Hyderabad, where he was admitted on 13.10.1999 and underwent major surgical intervention on 24.10.1999 to his right forearm with K-wire and steel rods were inserted and was discharged on 02.11.1999. He has also spoken to that he has to undergo yet another surgical intervention for removal of the implants.

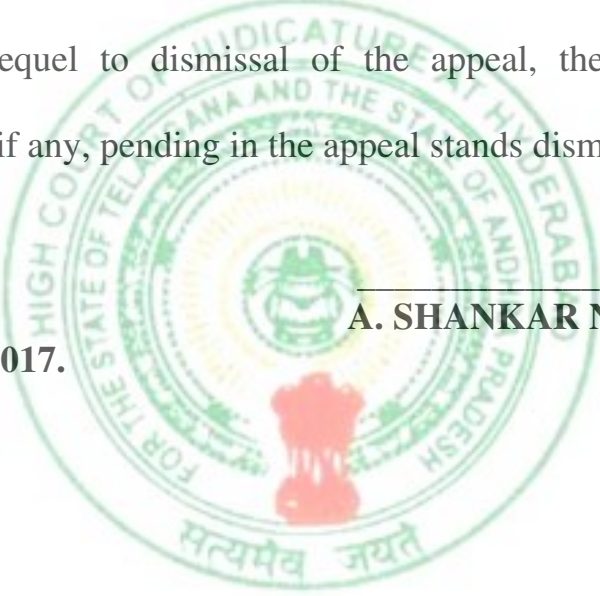
10. In AW.2's cross-examination, when he was pursued by the learned standing counsel for the insurer, he answered that he noted the injuries on AW.1, (1) Monteggia fracture dislocation of right elbow (fracture of the ulna with dislocation of radial head), (2) Smith's fracture of right wrist (worst form of Colles' fracture). He found mal-union of right wrist with restriction of all movements of the wrist joint on account of mal-union of right ulna. He did answer that he followed Kessler's guidelines while assessing the disability. He answered to a question that there is no possibility of reduction of disability in the present case. It is no doubt true, RW.1 assessed the disability at 25% and even asserted that it will come down once the internal fixation of the nail is removed and the fracture gets united. However, to a crucial question, he has answered that there will be a problem for driving even after the nail is removed and the problem will not be solved completely. This particular answer is to be examined in the light of the profession of the applicant. As already stated, he is a driver of heavy vehicle. However, what has been stated by AW.2 is accepted that it is one of the worst forms of Colles' fracture, completely restricting all movements of right wrist joint, then the question of driving a heavy vehicle holding a steering is very difficult and in fact, he becomes unfit to drive the heavy vehicle itself. That has been the reason, the learned Commissioner having detailed the consequences in paragraph No.27, accepted 100% disability and computed the loss of earning power and granted compensation applying the structural formula. As rightly pointed out by the learned counsel for the

applicant, for the monthly wage, even occurring in G.O.Ms. No.71 would amount to Rs.2,599-50 paise, still the learned Commissioner has taken only Rs.2,000/- without assigning any reasons as to why he has reduced it from Rs.2,599-50 paise. Thus, viewed in the context of profession of the applicant, certainly 100% disability taken by the learned Commissioner cannot be faulted.

11. Thus, there is no merit in the present appeal, and, therefore, the Civil Miscellaneous Appeal is dismissed.

As a sequel to dismissal of the appeal, the Miscellaneous Applications, if any, pending in the appeal stands dismissed.

October 12, 2017.
PV

A. SHANKAR NARAYANA, J